

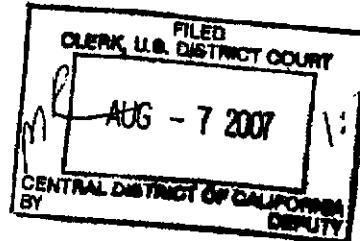
4  
5  
6  
7 WILLIAM BRADSHAW  
NAME

D-73217

PRISON IDENTIFICATION/BOOKING NO.

P.O. BOX 1689, CTF-CENTRAL, GW-325-Law  
ADDRESS OR PLACE OF CONFINEMENT  
SOLEDAD, CA 93960 -0689

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.



RE  
DUE

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM BRADSHAW  
FULL NAME (Include name under which you were convicted)

B. CURRY, WARDEN (A), et al  
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER

Petitioner,

v.

(33)  
 AMENDED

Respondent.

CASE NUMBER:

CV

SACV07-907 CAS(JC)

To be supplied by the Clerk of the United States District Court

PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY  
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION \_\_\_\_\_

PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT

(List by case number)

CV

CV

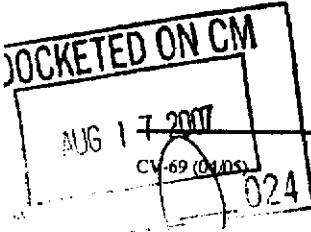
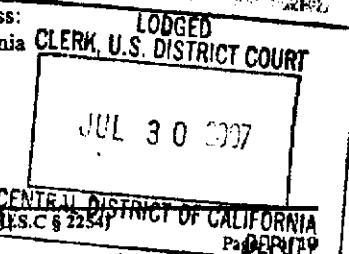
CV

## INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit in your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.

6. When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California  
United States Courthouse  
ATTN: Intake/Docket Section  
312 North Spring Street  
Los Angeles, California 90012



PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY (28 U.S.C. § 2254)  
1 of 42

• PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1.  a conviction and/or sentence.
2.  prison discipline.
3.  a parole problem.
4.  other.

**PETITION**

1. Venue

- a. Place of detention CORRECTIONAL TRAINING FACILITY - SOLEDAD
- b. Place of conviction and sentence ORANGE COUNTY SUPERIOR COURT  
700 CIVIC CENTER DRIVE WEST, SANTA ANA, CA 92703

2. Conviction on which the petition is based (*a separate petition must be filed for each conviction being attacked*).

- a. Nature of offenses involved (*include all counts*): 2nd Degree Murder ; Use of Firearm  
\_\_\_\_\_  
\_\_\_\_\_
- b. Penal or other code section or sections: Cal. Pen. Code §§ 187 , 22022.5  
\_\_\_\_\_  
\_\_\_\_\_
- c. Case number: C-62913
- d. Date of conviction: 11/3/87
- e. Date of sentence: 12/4/87
- f. Length of sentence on each count: 2nd Degree Murder = 15-to-life  
Use of Firearm = 2 years  
\_\_\_\_\_
- g. Plea (*check one*):  
 Not guilty  
 Guilty  
 Nolo contendere
- h. Kind of trial (*check one*): N/A  
 Jury  
 Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction?  Yes  No

If so, give the following information for your appeal (*and attach a copy of the Court of Appeal decision if available*):

- a. Case number: \_\_\_\_\_
- b. Grounds raised (*list each*):  
(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

(6) \_\_\_\_\_

c. Date of decision: \_\_\_\_\_

d. Result \_\_\_\_\_  
\_\_\_\_\_

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision?  Yes  No **N/A**

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: \_\_\_\_\_

b. Grounds raised (list each):

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

(6) \_\_\_\_\_

c. Date of decision: \_\_\_\_\_

d. Result \_\_\_\_\_  
\_\_\_\_\_

5. If you did not appeal:

a. State your reasons PLEA BARGAIN  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_b. Did you seek permission to file a late appeal?  Yes  No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

 Yes  No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

3 of 42

a. (1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_

(4) Grounds raised (list each):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result: \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

b. (1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_

(4) Grounds raised (list each):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result: \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

c. (1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_

(4) Grounds raised (list each):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_  
 (d) \_\_\_\_\_  
 (e) \_\_\_\_\_  
 (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result: \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

**CAUTION:** *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: CONTRARY TO /UNREASONABLE APPLICATION (28USC§ 2254(d)(1))

OF SUPERINTENDENT-V-HILL (1985) 472 U.S. 446 105 S.Ct 2768 WHEN PAROLE DENIED VIOLATED 14TH AMEND. LIBERTY INTEREST.

(1) Supporting FACTS: \_\_\_\_\_

Please See Amendment /Supplement Pages 16 - 36

HABEAS CORPUS

(2) Did you raise this claim on ~~direct appeal~~ to the California Court of Appeal?  Yes  No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

b. Ground two: People denied because State Court orders violated 28USC§ 2254(d)(2) WHICH VIOLATED 14TH AMEND. LIBERTY INTEREST

(1) Supporting FACTS: \_\_\_\_\_

Please See Amendment /Supplement Pages 37 - 40

HABEAS CORPUS

(2) Did you raise this claim on ~~direct appeal~~ to the California Court of Appeal?  Yes  No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

c. Ground three: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**HABEAS CORPUS**

(2) Did you raise this claim on direct appeal to the California Court of Appeal?  Yes  No  
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No  
 (4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

d. Ground four: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**HABEAS CORPUS**

(2) Did you raise this claim on direct appeal to the California Court of Appeal?  Yes  No  
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No  
 (4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

e. Ground five: \_\_\_\_\_  
 \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**HABEAS CORPUS**

(2) Did you raise this claim on direct appeal to the California Court of Appeal?  Yes  No  
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No  
 (4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

Yes  No

If so, give the following information for each such petition (*use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available*):

a. (1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_

(4) Grounds raised (*list each*):

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result: \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

b. (1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_

(4) Grounds raised (*list each*):

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result: \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction?  Yes  No HOWEVER, IN THIS COURT, CASE NO. JACV 05-1026 CAS, FROM LAST PAROLE HEARING STILL. (Cf.)

If so, give the following information (and attach a copy of the petition if available):

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_
- (4) Grounds raised (list each):
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
  - (d) \_\_\_\_\_
  - (e) \_\_\_\_\_
  - (f) \_\_\_\_\_

11. Are you presently represented by counsel?  Yes  No

If so, provide name, address and telephone number:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

N/A

*Signature of Attorney (if any)*

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 7/26/07  
 Date

Walt Miller  
*Signature of Petitioner*

WILLIAM BRADSHAW  
Petitioner

B.CURRY, WARDEN (A), et al  
Respondent(s)

DECLARATION IN SUPPORT  
OF REQUEST  
TO PROCEED  
IN FORMA PAUPERIS

\* NOTE IS ON 7 126101 COUNSELOR GIVEN ENVELOPE FOR \$ 50 TO BE SENT TO COURT.

I, N/A, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed?  Yes  No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. \_\_\_\_\_

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. \_\_\_\_\_

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment?  Yes  No
- b. Rent payments, interest or dividends?  Yes  No
- c. Pensions, annuities or life insurance payments?  Yes  No
- d. Gifts or inheritances?  Yes  No
- e. Any other sources?  Yes  No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts)

Yes  No

If the answer is yes, state the total value of the items owned: \_\_\_\_\_  
\_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (Excluding ordinary household furnishings and clothing)  Yes  No

If the answer is yes, describe the property and state its approximate value: \_\_\_\_\_

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: \_\_\_\_\_  
\_\_\_\_\_

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_

Date

N/A

Signature of Petitioner

#### CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ \_\_\_\_\_ on account to his credit at the \_\_\_\_\_ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date

N/A

Authorized Officer of Institution/Title of Officer

1 WILLIAM BRADSHAW (D-73217)  
2 P.O. BOX 689, CTF-CENTRAL  
3 GW-325-LOW  
4 SOLEDAD, CA 93960-0689  
5 (IN PRO PER)

6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11  
12  
13 WILLIAM BRADSHAW  
14 (PETITIONER)

15 AMENDMENT / SUPPLEMENT  
16 IN SUPPORT OF 28 USC § 2254

17 B. CURRY, WARDEN (A), et al  
18 (RESPONDENT(S))

19  
20  
21  
22  
23  
24  
25  
26  
27 AMENDMENT / SUPPLEMENT  
28 11 of 92

1                   INTRODUCTION

2       After conviction for 2nd Degree Murder in 1987  
 3       and arrival in prison on 12/16/87, Petitioner's LIFE  
 4       TERM of 15-to-life began 12/16/87.

5       At Petitioner's 5<sup>th</sup> Parole Consideration Hearing, which  
 6       occurred 2/8/06, he was once again denied parole  
 7       suitability. It is these actions now challenged.

8       Relevant portions of the entire State record are  
 9       accompanied in Petitioner's Lodgements ... separately but  
 10      contemporaneously filed. To avoid being pedantic or  
 11      duplicitious, Petitioner will reference said lodgements  
 12      as necessary.

13                   ADOPTION / INCORPORATION

14       Petitioner adopts and incorporates, as if fully stated  
 15       herein, the lodgement(s) as filed. It is Petitioner's  
 16       intent to have these lodgements as part of the  
 17       Record in this case.

18                   LODGEMENTS

- 19      I    8 2006 PAROLE HEARING DECISION TRANSCRIPTS
- 20      II   8 SUPERIOR COURT ORDER
- 21      III   8 APPELLATE COURT ORDER
- 22      IV   8 CAL. SUPREME COURT PETITION FOR REVIEW
- 23      V    8 CAL. SUPREME COURT ORDER DENYING RELIEF
- 24      VI   8 PSYCH REPORT

25                   AMENDMENT / SUPPLEMENT

26                   12 of 42

## JURISDICTION

Subject matter jurisdiction is appropriate  
pursuant to 28 USC § 2254 and 28 USC § 1331.

## VENUE

Venue is appropriate pursuant to 28 USC § 84  
and 28 USC § 2241(d).

## PARTIES

10 William Bradshaw (Petitioner) was convicted of 2nd  
11 Degree Murder, out of Orange County, California. He is  
12 a citizen of the United States and a current resident  
13 located in Monterey County, California.

14 B.CURRY, Warden (A) of Correctional Training  
15 Facility - Soledad and is the properly named Respondent  
16 for purposes of 28 USC § 2254.

17 Counsel for Respondent is Edmund G. Beau, Jr., Attorney  
18 General and/or Office of the Calif. Attorney General. All copies  
19 of filings have been /will be sent to said Counsel.

## LODGEMENTS

21 For purpose of expedience and classification all relevant  
22 documents have been lodged in a separate document  
23 entitled "Lodgements in Support of 28 USC § 2254  
24 Simultaneously Filed 7/126/07.

EVIDENTIARY HEARING

AN EVIDENTIARY HEARING SHOULD BE GRANTED IN LIGHT OF  
REFUSAL OF STATE TO PROVIDE ONE. TAYLOR-V-MADDIX (CA9 2004) 366 F.3d 992.

AMENDMENT / SUPPLEMENT

13 of 42

TIMELINESS

Petitioner contends his 28USC § 2254 Petition is timely under the AEDPA's 1-year time limits as follows:

The parole consideration hearing being challenged occurred 2/18/06. It was "final" for purposes of the official "Factual Predicate" until 6/18/06 (1 YEAR AEDPA start).

ORANGE COUNTY WRIT FILED: 7/25/06

ORANGE COUNTY WRIT DENIED: 8/18/06

4<sup>TH</sup> DIST APPELLATE WRIT FILED: 10/13/06

4<sup>TH</sup> DIST APPELLATE WRIT DENIED: 11/30/06

Pet. for Review (Cal.Sup.Ct.) Filed: 12/10/06

Pet. for Review (Cal.Sup.Ct.) Denied: 3/14/07

IN SUMMARY, +47 DAYS LAPSED BETWEEN FINALITY OF TRANSCRIPTS AND STATE SUPERIOR COURT FILING. TIME WAS TOLED.

SUBSEQUENTLY, SINCE THE STATES HIGH COURT DENIED THE PETITION FOR REVIEW, ONLY +134 ADDITIONAL DAYS HAVE LAPSED. CONSEQUENTLY, ONLY +181 DAYS OF THE AEDPA TIME LIMIT ARE FORFEIT.

THUS, PETITIONER'S WRIT FOR HABEAS CORPUS UNDER 28USC § 2254 is timely!

Amendment / Supplement  
14 of 92

STANDARD OF REVIEW

2 IN ORDER FOR PETITIONER TO ACQUIRE RELIEF  
3 THROUGH 28 USC § 2254, HE MUST GAIN ACCESS THROUGH  
4 THE GATEWAYS OF 28 USC § 2254(d)(1) AND 28 USC §  
5 2254(d)(2).

6 Relief is proper if Petitionee establishes a prima  
7 facie case that, under 28 USC §2254(d)(1), that either  
8 (A) the State Court's ruling was "contrary to" U.S. Ct.  
9 precedent, or (B) the State Court's ruling was an order  
10 being an "unreasonable application" of controlling U.S.  
11 S.Ct. holdings: see, e.g. Williams v Taylor (2000) 120  
12 S.Ct. 1495, 1517-20, 529 US 362.

Under the alternate prong of review, under 28 USC 2254(d)(2), Petitionee has to prove that the state's determination of facts were an "unreasonable determination of the facts in light of the evidence presented" and the evidence is "clear and convincing" - 28 USC § 2254(e)(1) - in his favor.

Under the 28 USC §2254(d)(1) "unreasonable application" analysis, the action must be "objectively unreasonable."

P rice v. Collins (2006) 546 US \_\_\_\_ . \_\_\_ set \_\_\_ has held  
that the § 2254(d)(1) / § 2254(d)(2) standards are distinct.

It can be fairly analyzed:

28 USC § 2254(d)(1) "antesay to" — questions of law

28 USC § 2254 (d)(1) "unreasonable application" — mixed questions of law and fact

28 USC § 2254 (d)(2) Question of fact under state law.

## (GROUND NO. 1)

Petitioner contends, in violation of 28 USC § 2254(d)(1), that the Calif. Court order used to deny Federal liberty interest in parole are "contrary to" / "unreasonable application" of the "some evidence" test held in Superintendent - - - v - Hill (1985) 472 U.S. 445, 105 S.Ct. 2768.

[1] As excerpted from Lodgement "I", Petitioner was denied his Federal 14<sup>th</sup> Amend. Liberty interest in parole, based on the following:

## [THE CRIME]

- "The offense was carried out in an especially cruel and callous manner in that you shot your vulnerable, estranged wife in the chest and knee. And she died due to gunshot wounds to the chest and injuries to the head where you hit her as she lay dying on the bed" - p.78 Decision Page (hereafter D.P.) 1, lines 1-18
- "The offense was carried out in a manner demonstrating exceptionally callous disregard for human suffering and you had previously ransacked your victim's home thereby instilling fear and terror in her. - p.78 D.P. 1 lines 22-26 / p.78 D.P. 2 line 1
- "The offense was carried out in a dispassionate and calculated manner in that after reportedly telephoning and threatening the life of Robert Parsons you went to the victim's residence armed." p.78 D.P. 2 lines 18-22

## [PRIORITY ADDITION]

- "However, you do have a record of alcohol and poly-substance abuse to which you have readily admitted." p.79 D.P. 2 lines 4-6

AMENDMENT / SUPPLEMENT

16 F 42

1 [1 cont.]

2 [PROGRAM]

3 "you have programmed within -- I would say  
4 a limited manner [.]"- p.79 D.P. 2 lines 7-8

5 [Counseling / Disciplinary]

6 "You do, however, have one 115, 2004, for  
7 possession of controlled band, and one 128 (2) that  
8 was in 1994 for smoking." - p.79 D.P. 2 lines  
18-21

9 [Parole Plans]

10 "As to your parole plans, you have what this  
11 Board considers questionable parole plans for  
12 residence in your last county -- excuse me --  
13 in California. That would be with your now wife,  
14 Elizabeth Bradshaw in Anaheim. Questionable  
15 because the two of you have never lived together.  
16 Are they realistic? I don't know. But we did  
17 discuss with you alternatives. And you have  
thought through alternatives. So that is -- you're  
to be commended for that and you do have that  
possibility in your mind." p.79 D.P. 2 lines 23-26/  
p.80 D.P. 3 lines 1-8

18 [D/A's opposition]

19 "Penal Code 3042 responses indicate opposition to --  
20 finding of parole suitability, specifically by the  
21 District Attorney of Orange County." p.80 D.P. 3  
lines 13-16

22 [2] The above grounds were fairly presented to California's  
23 highest court - i.e. Supreme Court of California.

24 [3] As previously stated, Petitioner was convicted, by  
25 plea bargain but has not received the reciprocal  
26 benefit of the implied lesser sentence for 2nd Degree  
27 murder.

28 AMENDMENT / SUPPLEMENT

17 of 42

- 1 [4] Petitioner's commitment offense occurred 10/10/1986 and  
 2 he was committed to prison on 12/16/1987. The lifetenn  
 3 began this day also, in 1987.
- 4 [5] In this instant petition, after Petitioner's Initial  
 5 Parole hearing occurring in 1997, he is challenging  
 6 his 4<sup>th</sup> Subsequent Parole Consideration hearing  
 7 (5<sup>th</sup> Parole Hearing overall) as related to his 15-to-  
 8 life sentence + 19 years after the commitment offense.
- 9 [6] At Petitioner's Initial Parole Hearing in 1997, he was  
 10 denied parole for 2 years.
- 11 [7] Next, Petitioner was denied parole for 4 years at his  
 12 1st subsequent parole hearing occurring in 1999.
- 13 [8] During the 2nd subsequent parole hearing of 2003,  
 14 Petitioner received a 1-year denial.
- 15 [9] After the 1-year denial of 2003, Petitioner received  
 16 another 1-year denial in 2004.
- 17 [10] Finally, after 8 years of denials, once again parole  
 18 was denied in 2006 but for 2 years.
- 19 [11] Based on the 3-tier Court system of California the  
 20 only relevant order is the Superior Court's [see  
 21 Lodgement "II"] because there were no later  
 22 reasoned opinions by either the Appellate Court  
 23 4<sup>th</sup> District of California or California Supreme  
 24 Court. [Lodgements III and IV]
- 25 [12] The Superior Court's order never mentions the  
 26 applicable "some evidence" test for judicial review.

27 AMENDMENT / SUPPLEMENT  
 28 18 F 42

- 1 [13] The only reasoned opinion (ordee), see Lodgement II,  
 2 only reviews what standard(s) the Parole Board applies.
- 3 [14] The D/A's statement didn't add any new evidence to  
 4 consider for parole unsuitability. The Board was to  
 5 be limited by the D/A's statements see CCR § 203d(1)  
 6 oral statements. They are not unsuitability criteria!
- 7 [15] Regarding parole plans, Petitioner has realistic parole  
 8 plans, i.e. to live with his retired wife where they  
 9 would both reside in the same residence with  
 10 an approximate \$5000<sup>±</sup>/month income from their  
 11 cumulative incomes. There was no evidence presented  
 12 to consider residential parole plans being "questionable".
- 13 [16] Further, the record was entirely devoid of any  
 14 evidence predicting an unreasonable threat to society,  
 15 based on an administrative rules violation report  
 16 (contend and minuscule) and custodial counseling  
 17 chrono. For "unsuitability", "serious" rules violations  
 18 are listed.
- 19 [17] Regarding Petitioner's "program", the BPH panel notes, as  
 20 excerpts: [From Parole Hearing Transcript]  
 21 (A) "[T]he correctional counselor notes your physical  
 22 limitations medical chrono c.7" - p.23 l.8-10  
 23 (B) "Excellent. Custodial history. You've remained  
 24 at CTF ... You've assigned ... since 2002 ....  
 25 [As] a clerk, then ... towing porter and ... back to  
 26 wins clerk - "p.24 l.22 - p.25 l.2

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 28 19 F 42

1 [7 cont.]

- 2 (C) "The counselor talks about ... above average work  
3 reports." - p.25 l 3-5
- 4 (D) "[A] laundry done by your work supervisor." -  
5 p.25 l 5-6
- 6 (E) "You've been an active participant in Narcotics  
7 Anonymous." - p.25 l 12-13
- 8 (F) "You completed the Family Effectiveness Training,  
9 Harmony in the Home self-help program." - p.25  
10 l 13-15
- 11 (G) "You have a certificate of completion for Anger  
12 Management course." - p.25 l 15-19
- 13 (H) "And you have also successfully completed a series  
14 of lectures entitled How to Become A Father And Not  
15 Get Angry." - p.25 l 19-21
- 16 (I) "In '89 you were working in industries as a  
17 sewing machine operator, in 1990 in the knitting  
18 mill." - p.34 l 3-5
- 19 (J) "From '90 to '93 you completed the vocational sewing  
20 machine repair." - p.34 l 5-6
- 21 (K) "In '91 you got a certificate of completion for vocational  
22 appliance repair" - p.34 l 6-8

23 NOTE: THIS RECORD REFUTES A LIMITED PROGRAM

- 24 (L) Notwithstanding the aforementioned, in the multi-page  
25 denial set of the transcripts, the Board reiterated  
26 the same facts previously stated (almost verbatim),

27 AMENDMENT / SUPPLEMENT  
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1 [18 cont.]

2 mentioned motive, and talked on how he couldn't  
 3 achieve the necessary self-help / therapy in 1 year.

4 "The Board recommends ... get self-help and get  
 5 those as its available. And additionally  
 6 develop self-help techniques to assist you  
 7 in dealing with the consequences of this  
 8 grave offense. See, when self-help is not  
 9 available in terms of programs, you can read...  
 10 And you can make book reports to this Panel...  
 11 And our concern is that we see before us a  
 12 man who has somewhat accepted and is on  
 13 the road to accepting what you have done." - p. 82  
 14 D.P. 5 lines 2-15

15 "What we're asking you to do is make a lot of  
 16 progress and you probably couldn't do that in  
 17 a year if you started today. Some think  
 18 the two year denial is in a way better for you."

19 (19) As part of the record, the BPH Deputy Commissioner  
 20 referred to a 12-29-05 psychological evaluation by  
 21 Ph.D. Macombee during the proceeding at page 25 l22-25,  
 22 page 26 l1-14 and page 32 l22-24. At Lodgement "VI", the  
 23 Psych Report is included.

24 (20) Part of the Psych Report stated at Page Three, Part XIII in  
 25 part: "At this point in time, there is no need for further  
self-help groups or participation in therapy programs.  
 26 His understanding, self-success and insight are excellent."  
 27 [Emphasis Added]

28 (21) Regarding self-help / therapy the evidence before  
 29 the BPH Panel refutes their analysis.

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1 [22] Further, based on #PC[18] supra, regarding acceptance/  
 2 insight, the BPH Panel has also disregarded the  
 3 Psych Report (Lodgement "VI"), PAGE TWO THREE, part  
 4 XIII:

5 "Inmate Beadshear discussed the commitment  
 6 offense in detail. He accepts full responsibility  
 7 for the victim's death. He does not attempt to  
 8 rationalize or minimize his behavior in the  
 9 commitment offense."

10 [23] The evidence before the Board refutes their rationale,  
 11 because there is no indicia of reliability for the  
 12 Board's multi-year rationale.

13 [24] Although the Board cites reclusiveness as motive, it  
 14 is neither inexplicable nor trivial to deny parole. Many  
 15 BPH cases show reclusiveness being in parameters for  
 16 murder. The Board made no conclusions.

17 [25] Regarding Petitioner's prior alcohol/poly-substance  
 18 abuse, a disability within the meaning of the  
 19 Americans with Disabilities Act, he was denied the  
 20 benefit of parole because of his prior disability.

21 [26] Referring this Court back to Lodgement "VI", page four  
 22 Part XIV:

23 "There are no significant risk factors in this case  
 24 at this time. In the past, drug and alcohol  
 25 use was a significant risk factor, which ---  
 26 is no longer a risk. -" [Emphasis Added]

27 Amendment / SUPPLEMENT  
22 F 42

1 (G7) Also, regarding abuse of alcohol/poly substance abuse  
 2 Lodgement "II" Part XII, page TWO in part:

3        "Inmate Bradshaw could be considered to have  
 4        a prior poly substance dependence, by history.  
 5        However, he does not meet the criteria of having  
 6        a current diagnostic label of drug dependence  
 7        because he has been clean and sober now for  
 8        20 years ... He has a very firm commitment  
 9        to absolutely avoid any use of drugs or  
 10      alcohol in the future - He understands how  
 11      destructive and devastating drug and alcohol  
 12      use can be in a person's life. Therefore this  
 13      label will not be listed as a current  
 14      problem.

15 (G8) Here, the evidence absolutely refutes the Board's  
 16      reliance on 30 year old substance abuse.

17 (G9) Related to the crime itself, CCR § 2402(c)(1) & (A-D)  
 18      apply to unsuitability.

- 19        (a) The record is devoid of the fact(s) necessary to  
 20        make the commitment offense an "execution-  
 21        style murder."
- 22        (b) The facts cited by the board do not prove an exceptionally  
 23        callous disregard for human suffering.
- 24        (c) Petitioner's actions do not show how the commitment  
 25        offense was "especially cruel and callous".

26 (G10) As previously stated, this was Petitioner's 5<sup>th</sup> parole hearing,  
 27      where he has now served more physical time than the  
 28      minimum 15 years of the 15-to-life term.

29 (G11) Notwithstanding the current facts used to deny parole,  
 30      they were used as follows in the past:

31 Amendment / SUPPLEMENT

32 23 of 42

1 [31 cont.]

2 1997 - 2 YEAR DENIAL

- 3  
4  
5  
6  
7  
8
- COMMITMENT OFFENSE
  - UNSTABLE SOCIAL HISTORY
  - PSYCHOLOGICAL REPORT NOT TOTALLY SUPPORTIVE

9 1999 - 4 YEAR DENIAL

- 10  
11  
12  
13  
14  
15  
16  
17
- COMMITMENT OFFENSE
  - UNSTABLE SOCIAL HISTORY
  - NEED FOR SELF-HELP / THERAPY
  - DA'S OPPOSITION

18 2003 - 1 YEAR DENIAL

- 19  
20  
21  
22  
23  
24  
25  
26  
27  
28
- COMMITMENT OFFENSE
  - UNSTABLE SOCIAL HISTORY
  - NEED FOR SELF-HELP / THERAPY
  - OPPOSITION BY DA / ANALYST P.D.

19 2004 - 1 YEAR DENIAL

- 20  
21  
22  
23  
24  
25  
26  
27  
28
- COMMITMENT OFFENSE
  - NEED FOR SELF-HELP / THERAPY
  - OPPOSITION BY DA
  - UNSTABLE SOCIAL HISTORY -

(32) Attached at Lodgement III is a true copy of the the Petition for Review to the Calif. Supreme Court.

(33) At PETITIONER'S HEARING, THE PANEL HAD HIS CENTRAL(C) - FILE: "All I can tell you is what's -- what's in the C-file and what date it is." Deputy Commissioner Filangi p. 4  
2/14/16. The Board thus REVIEWED: 1/18/03 Self Help Chrono; 6/15/95 "LIFESKILLS" CHRONO; 12/7/90 SELF ESTEEM CHRONO; 1/28/91 STRESS MANAGEMENT / RELAXATION CHRONO; 6/14/91 REACTIVATION CHRONO; 5/18/92 GROUP THERAPY CHRONO; 2/03/93 DEPRESSION THERAPY GROUP CHRONO; 9/4/92 ONE-ON-ONE PSYCHOTHERAPY; AMENDMENT / SUPPLEMENT

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AND 6/18/93 32 SESSION SUBSTANCE ABUSE THERAPY TO NAME A FEW.

1                   Memorandum of Points and Authorities

2                   [CONTRARY TO]

3 Petitioner proffers that the Calif. Judiciary orders  
 4 were "contrary to" the holdings of Superintendent ...-v-Hill  
 5 (1985) 472 US 445, 105 S.Ct. 2762. Hamdi -v- Rumsfeld (2004)  
 6 542 US 507, 124 S.Ct 2633:

7                   " [W]e have utilized the "some evidence" standard in the  
 8 past as a standard of review, not a standard of proof."

9 Thus, where the Calif. Judiciary never applied a standard  
 10 of review, but only cited to interpretive law on Parole Board's  
 11 standard of proof. Clearly, a contradiction of "some evidence" test.

12                   Superintendent -v-Hill, *supra*, at p.2775:

13                   "Instead, the relevant question is whether there is any  
 14 evidence in the record that could support the  
 15 conclusion reached .... The fundamental fairness  
 16 guaranteed by the Due Process Clause does not  
 17 require courts to set aside decisions of prison  
 18 administrators that have some basis in fact."

19                   U.S.-v-Armstrong (9<sup>th</sup> Cir. 1995) 48 F.3d 1508, 1512: "Of course,  
 20 "some evidence" means the showing must be more than frivolous  
 21 and based on more than conclusory allegations." Here, the Calif.  
 22 Judiciary only made conclusory allegations, contrary to what the law  
 23 makes "evidence" to be.

24                   Inevitably, the law (as applied by state courts) contradicted  
 25 the "some evidence" test of Hill, *supra*.

26                   The same year as Hill, *supra*, the HIGH COURT also ruled in  
 27 Evitts -v-Lucay (1985) 105 S.Ct 250 1469 US 382 and Waltees -v-  
Nat-Assn. of Radiation Survivors (1985) 473 US 305, 105 S.Ct. 3180,  
 28 87 L.Ed 2d 220 (Evitts or Waltees, hereafter).

27                   Amendment / SUPPLEMENT

28                   25 of 42

1                   MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2     Keeping in mind that there was no state evidentiary hearing,  
 3     the state courts upholding the BPP's fact finding should necessitate  
 4     a federal evidentiary hearing.

5     Irons v. Carey (CA9 Cal. 2007) 479 F.3d 658, 662:

6         "When we assess whether a state parole board's  
 7         suitability determination was supported by "some  
 8         evidence" in a habeas case, our analysis is framed  
 9         by the statutes and regulations governing parole  
 10         suitability determinations in the relevant state....  
 11         Accordingly, here we must look to California law  
 12         to determine the findings that are necessary to  
 13         deem a prisoner unsuitable for parole, and then  
 14         must review the record in order to determine whether  
 15         the state court decision holding that those findings  
 16         were supported by "some evidence".

17     Hereafter, Petitioner addresses his identified reasons the Board  
 18     denied parole, in order with exception that the crime  
 19     will be addressed last.

20     There is no evidence that Petitioner's prior abuse of substances  
 21     establishes he is a current threat to society. In re Mack Smith  
 22     (2003) 109 Cal. App. 4th 489, 505, 134 Cal. Rptr. 2d 781, 792 "[A] prisoner's  
 23     prior addiction is not an appropriate consideration in determining  
 24     parole suitability." Thompson v. Boenisch -v- Davis (CA9 Cal. 2002)  
 25     (parole hearings are public programs carried by ADA and parole  
 26     can't be denied on Petitioner's history of substance abuse). -295  
 27     F.3d 890

28     There is no evidence that Petitioner has programmed in  
 29     a limited manner or needs more self-help/therapy.

30                   AMENDMENT / SUPPLEMENT  
 31                   27 of 42

1                   MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2 The aforementioned facts and Psych report disprove the Board's  
 3 logic and mechanical analysis for program/self help/therapy being  
 4 needed. In Willis v. Kane (USDC N.D. Cal. 2007) F.Supp.2d  
 5 2007 WL 1232060: "In light of the favorable psychological reports and  
 6 the absence of any mention therein of a need for further self-help or  
 7 therapy programming, there was not some evidence to support...  
 8 willis had not sufficiently participated in beneficial self-help  
 9 and therapy programming." Petitioner is in the same situation.  
 10 The Board has CCR § 2402(c)(5): "Psychological Factors. The  
 11 prisoner has a lengthy history of severe mental problems  
 12 related to the offense." The record is devoid of any CCR § 2402(c)  
 13 (5) criticisms. Additionally, In re David Barker (Cal App. 2nd Dist.  
 14 2007) 2007 DODAR 7548, 7555:

15                  "Receding the Board's... finding, that Barker needed  
 16 therapy, none of the psychological reports in the  
 17 record mentions need for therapy.... These conclusions,  
 18 of course, see the opinions of trained experts, all of  
 19 whom said Barker did not need therapy. We see troubled  
 20 thinking by... a boilerplate finding that seems to  
 21 make its way into every denial of parole, whatever  
 22 the record - and despite repeated criticisms from  
 23 the courts."

24                  Additionally, there is no evidence to substantiate that  
 25 Petitioner's 128(a) and Administrative 115 fell within the  
 26 unsuitability circumstance of CCR § 2402(c)(6)

27                  AMENDMENT / SUPPLEMENT  
 28                  28 of 42

1        MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2        "Institutional Behavior. The prisoner has engaged  
 3        in serious misconduct in prison or jail."

4        A CDC 12B(a) is a "counseling chrono" not disciplinary, and  
 5        is for minor not serious misconduct (see In re Mark Smith, super  
 6        at p.792). Also, the possession of the petitioner being "administrative"  
 7        was not evidence that petitioner poses an unreasonable threat  
 8        to society under the "serious" parameters of CCR § 2402(c)(6).  
 9        Here, the Board even disregards the long established holding of  
 10      Cafeteria Workers v. McGehee (1961) 367 US 886, 6 L.Ed.2d 1230, 1236  
 11      81 S.Ct. 1743: "[D]ue process, unlike some legal rules, is not a  
 12      technical conception with a fixed content unrelated to time, place,  
 13      and circumstances." It is "compounded of history, reason, and the  
 14      past course of decisions...." [Emphasis Added]

15        Jancsek v. Oregon Bd. of Parole (9th Cir. 1987) 833 F.2d 1389, 1390: The  
 16      evidence underlying the [parole] board's decision must have some  
 17      indicia of reliability. "In *securando*, prison misbehavior can  
 18      be but is not always the same as criminal behavior, thus  
 19      it is analogous for determining threat to public: when prison  
 20      misbehavior is so minor in nature that it isn't a crime the prison  
 21      disciplinary process itself should be enough punishment.

22

23

24        THERE WAS ALSO NO EVIDENCE TO DEMONSTRATE  
 25      PAROLE PLANS (i.e. to live with his wife) were questionable.  
 26      California is a community property state and petitioner

27      AMENDMENT / SUPPLEMENT

28      29 F 42

1                    MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2 having the State and Federal Constitutional rights to marry do  
 3 not make his plans to reside with his "wife" questionable.

4 In re Libbie R. Andrade 2006 DAR 9682 (7/26/06) 141 Cal.App. 4<sup>th</sup>  
 5 807, 46 Cal.Rptr.3d 317 review denied 11/1/06 has clarified what  
 6 is expected when it comes to parole plans:

7         "Here, the regulation requires an inmate to have  
 8         "realistic plans for release" or "developed marketable  
 9         skills that can be but to use upon release." ... thus,  
 10       based on its clear language, the regulations requirement  
 11       that an inmate have parole plans is limited to  
 12       requiring realistic plans. The entire thrust of the  
 13       regulation is practicality .... More importantly,  
 14       the regulation does not suggest that such fool-proof  
 15       plans are necessary. The plain language of the  
 16       regulation [i.e. CCR § 2402(d)(8) - Circumstance Tending To  
 17       Show Suitability] supports the opposite conclusion. By  
 18       referring to "realistic" parole plans, the regulation  
 19       does not contemplate iron-clad and unrealistic plans."

20       Furthermore, the DA's opposition to parole is not evidence  
 21       of parole unsuitability. The Los Angeles County Superior Court  
 22       in the case of In re Robert Rosenkrantz, Case No. BH003529, on  
 23       6/26/06 , appeal denied . Petition for Review by Respondent denied has  
 24       affirmatively settled what use the DA's opposition plays. Specifically,

25       "The Board further stated in its decision that the  
 26       Deputy District Attorney ... opposed parole while the  
 27       Board is required to consider such opposition ... that  
 28       opposition is not a factor on which the Board may rely  
 29       to deny parole as enumerated in title 15, section  
 30       2281 of the Cal. Code of Regulations." <sup>(a)</sup>

27       <sup>(a)</sup> CCR § 2400 et seq., same criteria  
 28       AMENDMENT / SUPPLEMENT

1                   MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2 Both Res Judicata / Collateral Estoppel should bar any petition for  
 3 on this ability of the BPH's use of DA's opposition as evidence  
 4 of unsuitability.

5

6

7 Finally, there is no evidence in the record to suggest  
 8 that the commitment offense (A) still offers predictability after  
 9 20 years and (B) that it was "especially cruel and callous".  
 10 To begin, Petitionee refreshes this Court's memory of the allegedly  
 11 applicable Title 15 sections, as used by the Board.

12 CCR §2402(c)(1)'s circumstance of "especially heinous,  
 13 atrocious, or cruel", to be supported by factor(s) of:

14         CCR §2402(c)(1)(B)'s "The offense was carried out in a  
 15 dispassionate and calculated manner,  
 such as an execution-style murder.

16         CCR §2402(c)(1)(D)'s "The offense was carried out in a manner  
 17 which demonstrates an exceptionally  
 callous disregard for human suffering.

18         CCR §2402(c)(1)(E)'s "The motive for the crime is inexplicable  
 19 or very trivial in relation to the  
 offense."

20 In the instant case, "motive" was only used in the multi-year  
 21 denial; moreover, the motive for the crime was very trivial in  
 22 relation to the offense in that it was jealousy. - p.81 D.P. 4  
 23 lines 15-17. The Board made no comparisons in the record as  
 24 required by In re Scott 119 Cal. App. 4th 871, 15 Cal. Rptr. 3d 32 (trivial  
 25 motives require comparisons). Petitionee proffers that "jealousy"  
 26 is within the norms (statistically) of murder. In re Lawrence,

27                   AMENDMENT/ SUPPLEMENT

28                   31 of 42

1 memorandum of points and authorities continued  
2 infra, fn. 116 cite to In re Scott, ~~\_\_\_\_\_~~, 133 Cal.App.4<sup>th</sup> at page 579  
3 (In In re Scott, a nursing wife told her husband she was leaving  
4 her lover and returning to the husband, but then didn't show up. In a  
5 rage, the husband drove over to the lover's house and shot him in the  
6 head with a rifle.)

7 Referring back to Grid 1 P1, this Court can see that  
8 when the Board alleged "dispassionate and calculated", it referred  
9 to no scenario even close to an "execution-style murder". Also,  
10 in the BPH Panel's zeal to create rationale it claimed the  
11 offense was carried out in a manner demonstrating an exceptionally  
12 callous disregard for human suffering" with no facts to  
13 substantiate more suffering was inflicted than needed to commit  
14 the murder.

15 As excerpted from 12/4/87 Orange County probation report.  
16 From 4<sup>th</sup> Subsequent Hearing Transcript p-10 lines 24-27 / p.11 l 1-2:  
17 "The attorney of the defendant  
is Mr. [redacted] [redacted]  
[redacted] [redacted] [redacted]

17 "The autopsy results indicate that the victim  
18 had been shot in the chest and knee and had  
19 died due to the gunshot wound to the chest and  
injuries to the victim's head." [Emphasis Added]

20 Here, the record only reflects the minimum actions  
21 to cause death included the chest wound and head injuries.

In re Ernest Smith (Cal. App. 6<sup>th</sup> Dist. 2003) 114 Cal. App. 4<sup>th</sup> 343, 367, Cal. Rete 3d : (parameters of exceptionally callous disregard for suffering is (A) defendant acted with cold, calculated dispassion; or (B) gratuitously increased or unnecessarily prolonged pain and suffering).

AMENDMENT / SUPPLEMENT  
32 of 42

1           MEMORANDUM OF POWERS AND AUTHORITIES CONTINUED

2           Similarly, Petitionee's case also follows In re Sandra Davis  
 3           LAWRENCE (Cal. App. 2nd Dist. 2007) — Cal. Rule 3d —, 2007 WL 147-

4           52B3 : "Nothing suggests those wounds were inflicted to  
 5           cause Mrs. Williams more pain than required to  
 6           kill her.... Similarly, if the Governor's finding  
 7           Lawrence exhibited an "exceptionally callous  
 8           disregard for human suffering" suggests she  
 9           intentionally inflicted more suffering than  
 needed to commit the murder, that finding  
 likewise is inconsistent with the evidence."

10           Simply put, there is no evidence to substantiate the  
 11           commitment offense is/was especially cruel and callous.

12  
 13  
 14           Notwithstanding how Petitionee has established there is no  
 15           evidence for CCR § 3402(c)(1)(2)(3)(4)(5) or (6) unsuitability;  
 16           there is also no evidence that the relied upon immutable  
 17           (unchanging) factors currently used show Petitionee is a  
 18           threat to society. In re Lawrence, supra, at p. —:

19           "Thus, if as some of the federal cases hold, the  
 20           predictive value of the commitment [offense]  
 21           crime dissipates to the point it cannot satisfy  
 22           the "some evidence" standard 17 to 20 years  
 23           after its commission . . . . Unlike Bites, Soss, Irons,  
 24           Lawrence has served far beyond the "minimum  
 25           number of years required by his sentence."

26           Irons v. Carey (C.A. (Cal. 2007) 479 F.3d 658 (in certain cases  
 27           due process may not be violated before minimum term is  
 28           physically served excluding goodtime credits). Petitionee is  
 also beyond his minimum. THE 14TH AMENDMENT'S "DUE PROCESS" LIBERTY  
 INTEREST WAS VIOLATED. AMENDMENT/SUPPLEMENT

1                   MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED  
 2                   (UNREASONABLE APPLICATION)

3       Because Petitioner is seeking review under 28 USC § 2254(d)(1),  
 4       the "unreasonable application" analysis of Superintendent -  
 5       Hill (supra) "some evidence" should also be reviewed.  
 6       Relief is owed to the State's reasoning only when not  
 7       "objectively unreasonable". Thus, Petitioner proffers, based  
 8       on the same set of operative facts and supporting documents  
 9       (Lodgements) that the Board's findings as upheld by the  
 10      State Judiciary of California were also "objectively  
 11      unreasonable". Here, where the California courts did not  
 12      properly apply the "some evidence" test to the facts (mixed  
 13      question of law and facts), there can be no state finding  
 14      of a proper assessment in light of the record the state  
 15      courts had before them (see Holland - v - Jackson (2004) 124 S.Ct.  
 16      2736, 2737-38).

17       Further, Williams - v - Taylor (2000) 120 S.Ct. 1495, 1519-20,  
 18      529 US 362 ("unreasonable application" when state unreasonably  
 19      refuses to extend the proper principle and its restrictions to a new  
 20      context where it should apply). Under the "some evidence"  
 21      test, where Petitioner has established the parole board's  
 22      ruling is arbitrary, capricious, lacking basis in fact or  
 23      contrary to law: THERE CAN BE NO EVIDENCE TO DENY  
 24      24<sup>TH</sup> AMENDMENT LIBERTY INTEREST IN PAROLE.

25       In the California parole hearing context, the "some  
 26      evidence" precedent is not ambiguous to deny relief.

27                   AMENDMENT / SUPPLEMENT  
 28                   34 of 42

1                    MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2        Where state and federal courts have judicially determined  
 3        the parameters of what is "some evidence" and what is it/no  
 4        longer "some evidence": deference cannot be paid to support  
 5        findings contrary to law.

6        Arkansas v. Oklahoma (1992) 112 S.Ct. 3046, 5060, 503 U.S. 22  
 7        used: "As we have often said an agency ruling is 'arbitrary  
 8        and capricious' if the agency has ... entirely failed to  
 9        consider an important aspect of the problem." Petitionee  
 10      has established a prima facie case of the state court's  
 11      orders ("look-through" rule - Ylst v. Nunnemacher (1991) 501 U.S. 797,  
 12      803, 111 S.Ct. 2590, 115 L.Ed. 2d 706) were objectively unreasonable  
 13      Wolff v. McDonnell (1974) 416 U.S. 539, 558, 94 S.Ct. 2963, 2976  
 14      (guaranteed protection of the individual against arbitrary action  
 15      of government). Also, Oregon Natural Resources Council v. Lane  
 16      (9th Cir. 1997) 109 F.3d 521, 526: "Although review under the arbitrary  
 17      and capricious standard is narrow, the agency must articulate  
 18      a rational connection between the facts found and the  
 19      conclusions made." Petitionee has established how the BPH's  
 20      actions were not rational.

21      Additionally favorable to support Petitionee is entitled to  
 22      relief is Newman v. AFL (9th Cir. 2000) 223 F.3d 937, 943 (agency  
 23      having discretion can't justify reasons based on specious grounds),  
 24      and Enrico's, Inc. v. Rice (9th Cir. 1984) 730 F.2d 1250, 1253 (an  
 25      agency must follow the correct interpretation of a rule  
 26      or regulation). The BPH's camouflage is blatant and disingenuous.

27                    Amendment / SUPPLEMENT

28                    (R) Emphasis Added

35 of 42

1           MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED  
 2           Briefly mentioning the conviction for 2nd Degree murder,  
 3           by plea bargain, in light of the aforementioned cases, where  
 4           the minimum was 15 years and Petitioner is ± 20 years  
 5           into the incarceration, it is objectively unreasonable to  
 6           expect him to serve time for 1st Degree murder. In re  
 7           Cardenis Caceres (Cal.App. 5<sup>th</sup> Dist. 1983) 193 Cal.Rptr. 65 (The court  
 8           noted it is unrealistic to assume [A] petitioner will serve  
 9           a life term or a substantial part of the life term beyond the  
 10           minimum). The absurdity of the system comes to light  
 11           when put into the following perspective: (A) ± 20 years of  
 12           actual incarceration; (B) At least 12 months of Good-time Credit  
 13           forthcoming and (C) the maximum of the 2nd Degree mateix  
 14           being 21 years.

15           Where the commitment offense doesn't have any current  
 16           value to the unsuitability question; the prior addictions not  
 17           being valid to use for unsuitability; record is devoid of  
 18           any valid rationale for further self-help; minor counseling  
 19           and disciplinary show no risk to society; parole plans to  
 20           reside with wife are valid and DA's opposition to parole  
 21           unsuitability is not "some evidence" the California  
 22           Courts also failed to apply Superintendent... v. Hill,  
 23           supra, in an objectively reasonable manner.

24           There is no dispute about Petitioner's having accepted full  
 25           responsibility, and In re David Becker, supra, at p. 7556 (no minimum  
 26           time requirement so long as the inmate genuinely accepts  
 27           responsibility). UNDER THE ALTERNATIVE ~~AMENDMENT~~ <sup>AMENDMENT / SUPPLEMENT</sup> 28<sup>th</sup> (a)(1) PRONG, DUE PROCESS  
 clause of 14<sup>th</sup> Amend. violated.      36 of 42

## (GROUND No. 1)

Petitioner contends in violation of ABUSC § 2254(d)(2), that the Calif. Court orders used to deny Federal liberty interest in parole see an "unreasonable determination of the facts in light of the evidence presented" because the "close and convincing" evidence disproves any threat to the public if granted parole.

- [1] Petitioner adopts and incorporates herein, as if fully stated herein, Ground 1's P's [1], [2], [3], [5], [6], [7], [8], [9], [10], [11], [12], [13], [14], [15], [16], [17], [18], [19], [20], [21], [22], [23], [24], [25], [26], [27], [28], [29], [30], [31], [32], [33]
- [2] The Orange County Superior Court did not hold any evidentiary hearing, before making findings of fact.
- [3] The Fourth District Court of Appeal held no evidentiary hearings before issuing its 1 line summary denial.
- [4] The California Supreme Court, before denying review did not hold an evidentiary hearing.
- [5] The "close and convincing" evidence disproves the BPH's use of the following to establish parole unsuitability:

\* THE COMMITMENT OFFENSE : BECAUSE THERE were no more acts related to the 2nd deg. Murder to be more than the minimum necessary to convict and time has lapsed so as to cause the crime itself to no longer have valid evidentiary weight

Amendment / supplement

1 [4 cont.]

- 2 • PRIOR ADDICTION
  - 3        8 BECAUSE THERE IS NO POST-CRIME  
EVIDENCE THAT THIS IS LEGALLY OR  
FACTUALLY A REASON FOR PAROLE.
- 4
- 5 • PROGRAM (MORE SELF-HELP/  
THERAPY )
  - 6        8 THE RECORD BEFORE THE BOARD IS  
DEVOID OF ANY EVIDENCE THAT  
MORE SELF-HELP / THERAPY IS  
NEEDED.
- 7
- 8
- 9
- 10 • COUNSELING / ADMINISTRATIVE  
DISCIPLINARY
  - 11        8 THE CDC 128(a) IS A CUSTODIAL  
COUNSELING CHRONO. ALSO, THE  
SCENDEEVE WAS AN ADMINISTRATIVE  
DISCIPLINARY. NEITHER WAS A  
"UNSUITABILITY CIRCUMSTANCE".
- 12
- 13
- 14 • PAROLE PLANS
  - 15        8 THE FACTS SHOW, DUE TO DISABILITY,  
INCOME WILL BE FROM BENEFITS  
AND REALISTIC PLANS EXISTED  
TO LIVE WITH WIFE.
- 16
- 17
- 18 • D/A'S OPPOSITION
  - 19        8 THE UNDISPUTABLE FACTS ARE  
THAT THE D/A'S OPPOSITION IS  
NOT A GROUND FOR UNSUITABILITY.
- 20
- 21 • MOTIVE
  - 22        8 JEALOUSY / RAGE ARE NOT TRIVIAL  
REASONS PEOPLE MURDER OTHERS.
- 23 • SELF STUDY ON RAGE
  - 24        8 COULD HAVE BEEN MADE A  
SPECIAL REQUIREMENT OF  
PAROLE, AND SHOULDN'T TAKE 2 YEARS  
IF PRISON HAD RESOURCE(S) TO  
PROVIDE IN PAST
- 25
- 26
- 27 AMENDMENT / SUPPLEMENT
- 28                  38 of 42

1                   MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

2                   [unreasonable determination of the facts in light of evidence"]  
 3                   Petitioner is also entitled to 28USC§ 2254 relief under  
 4                   §(d)(2) when the facts prove that the state court's analysis  
 5                   was "an unreasonable determination of the facts in light  
 6                   of the evidence presented" because "clear and convincing"  
 7                   evidence disproves the court's analysis.

8                   Taylor -v- Maddox (9th Cir. 2004) 366 F.3d 992 has guided in the  
 9                   above analysis under both 28USC §§ 2254(d)(2), 2254(e)(1).

10                  Taylor, at pp.999-1000 has held:

11                  "The first provision -the "unreasonable determination"  
 12                  clause - applies most readily to situations where  
 13                  petitioner challenges the state court's findings based  
 14                  entirely on the state record. Such a challenge  
 15                  may be based on the claim that the finding  
 16                  is unsupported by sufficient evidence. [cites  
 17                  omitted], that the process employed by the state  
 18                  court was defective. [cites omitted], or that no  
 19                  finding was made by the state court at all[6]"

20                  Because the state only issued one reasoned opinion (i.e.  
 21                  Supreme Court) followed by two summary denials (i.e. the  
 22                  Appellate Court and Supreme Court) the "look-theory" doctrine  
 23                  of Ylst -v- Nunnemacher (1991) 501 US 797, 803, 111 S.Ct. 2590, 115 L.  
 24                  Ed. 3d. 706 applies. Based on the facts and comparison to the  
 25                  only reasoned opinion, it should be evident that the so called  
 26                  "reasoned opinion" avoided many of the facts alleged.

27                  Taylor, supra, at pp.1001;

28                  "If, for example, a state court makes evidentiary findings  
 29                  without holding a hearing and giving petitioner an  
 30                  opportunity to present evidence, such findings clearly  
 31                  result in an "unreasonable determination" of the facts.

AMENDMENT / SUPPLEMENT

39 f 42

1                   memorandum of points and authorities continued

2       Here, it is closely evident that the state court made  
 3       evidentiary findings without the required evidentiary  
 4       hearing.

5       Further, as alleged in the facts aforementioned, the facts  
 6       used to deny people were not adequate and prove the state-  
 7       court was in error. The error is so biased that no deference  
 8       can be paid to those findings.

9       Regarding deference, Paulley v. Betheuneedy Mines, Inc. (1991) 111 S.Ct.  
 10      2524, 501 US 681 has held:

11      "As a general matter, of course, the case for judicial  
 12      deference is less compelling with respect to  
 13      agency positions that are inconsistent with previously  
 14      held views."

15      Put another way, Burlington Truck Lines v. United States (1962)  
 16      371 US 156, 168, 83 S.Ct 239, 245-246, 9 L.Ed.2d 207, 216 has held:

17      "[A] simple but fundamental rule of administrative  
 18      law... is... that a reviewing court, in dealing  
 19      with a determination or judgment which an  
 20      administrative agency alone is authorized to make,  
 21      must judge the propriety of such action solely by  
 22      the grounds invoked by the agency. If those grounds  
 23      are inadequate or improper, the court is powerless  
 24      to affirm the administrative action." [Emphasis Added]

25      This Court, as well as an court, should keep in mind  
 26      that the people board's actions identifying evidence must  
 27      support that there is not just a risk to society, but an  
 28      "unmeasurable risk" if people were to occur. Under the  
 14<sup>th</sup> Amend's "Due Process" clause, there see no facts to deny people-

27                   Amendment/Supplement

## Conclusion

Based on the aforementioned facts and authorities, habeas corpus relief is proper under the 28 USC § 2254 (d)(1) and 28 USC § 2254(d)(2) standards of review.

Petitioner has established prima facie case for relief because he has established how the state court rulings were "contrary to" / "unreasonable application of the Superintendent -v- Hill (1985) 472 US 445, 105 S.Ct. 2768 "some evidence" test as well as having substantiated how the state court orders were also "an unreasonable determination of the facts in light of the evidence presented" - 28 USC § 2254 (d)(2) - as the "clear and convincing" evidence entirely fails to prove there would be an "unreasonable risk of danger to society" - CCR § 2403(a).

15 The evidence (e.g. Psych Report) and the law belie the  
16 Board's disingenuous regard for the 2nd Degreee plea bargain  
17 and culpability allegedly associated therewith. At no time  
18 did the Board ever allege that more than the minimum  
19 existed to convict for 2nd Degreee Murder.

20 Here, where the Board did recognize some of the suitability  
21 circumstances, the Calif. Judicary's determination that "tools"  
22 were needed to deal with "race" is a state created smokescreen  
23 to deprive Petitioner his 14<sup>th</sup> Amendment liberty interest  
24 in raciale suitability: under due process.

25 | //

26

27

AMENDMENT / SUPPLEMENT

41 of 42

1                   PRAYER FOR RELIEF

2 WHEREFORE, Petitioner respectfully prays this Court to:

- 3     (1) Issue the Writ of Habeas Corpus;
- 4     (2) Issue an Order to Show Cause and Appoint Counsel  
5       as other inmate help is random and sporadic;
- 6     (3) Order an evidentiary hearing because the state  
7       refused to hold an evidentiary hearing;
- 8     (4) Declare Petitioner's rights to "Due Process" under the  
9       14<sup>th</sup> Amendment violated by the Parole Board and  
10      Calif. Judiciary;
- 11     (5) Vacate the Parole Board's findings of fact and order  
12      them to comply with due process.
- 13     (6) Vacate the State courts' findings of fact and law;
- 14     (7) Grant any other relief deemed proper and in the  
15      interest of justice.

16

17

18                   Respectfully submitted,

19

20                   7/26/2007

21                   William Bradshaw  
22                   WILLIAM BRADSHAW  
23                   IN PRO PER

24

25

26

27                   AMENDMENT/SUPPLEMENT  
28                   92 f 42

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY  
(C.C.P. §§ 1013(A), 2015,5)**

I, PAUL HERBE, declare:

I am over 18 years of age and I am<sup>(not)</sup> party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

PAUL HERBE, CDCR #: P-04364  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: GW-343-44  
SOLEDAD, CA 93960-0689.

On JULY 26, 2007, I served the attached:

RE: Petition For Writ of Habeas Corpus By A Person In State Custody  
28 USC / Amendment - Supplement In Support Thereof /  
Lodgements (separately Attached)  
on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

ORIGINAL + 2 COPIES

- COPY -

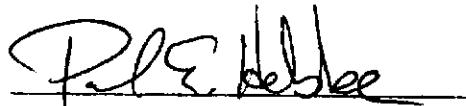
ATTN: CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
United States Courthouse

Edmund G. Brown Jr., Attorney General, et al  
c/o Office of the Attorney General  
P.O. Box 85266  
San Diego, CA 92186-5266

ATTN: Intake/Docket Section  
312 North Spring Street  
Los Angeles, California  
90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 26 JULY 2007.



Declarant

-LAST-

1 WILLIAM BRADSHAW (D-73217)  
2 P.O. BOX 689, CTF-CENTRAL  
3 GVN-325-LAW  
SOL-DAD, CA 93940-0689  
(IN PRO PER)

4

5

6

7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10

11

12

13 WILLIAM BRADSHAW  
(PETITIONER)

14  
15 -v-

16 B. CURRY, WARDEN(A), et al  
(RESPONDENT(S))

CASE NO.

RE: "LODGEMENTS IN SUPPORT  
OF 28 USC § 2254  
SIMULTANEOUSLY FILED  
7/126/2007

17  
18 LODGEMENTS

- 19 I 8 2006 PAROLE HEARING DECISION TRANSCRIPTS  
20 II 8 SUPERIOR COURT ORDER  
21 III 8 APPELLATE COURT ORDER  
22 IV 8 CAL. SUPREME COURT PETITION FOR REVIEW  
23 V 8 CAL. SUPREME COURT ORDER DENNING RELIEF  
24 VI 8 PSYCH REPORT

25

26 7/126/2007

27

28 111

  
WILLIAM BRADSHAW  
IN PRO PER

# LODGEMENT I

Board of Parole Hearings Decision To Deny Parole

LODGEMENT I

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER FILANGERI: We're on  
4 record.

5 PRESIDING COMMISSIONER BRYSON: The time  
6 is 1647 in the matter of William Bradshaw. Sir,  
7 the Panel reviewed all information received from  
8 the public and relied on the following  
9 circumstances in concluding that you are not  
10 suitable for parole and would pose an  
11 unreasonable risk of danger to society or a  
12 threat to public safety if released from prison.  
13 The offense was carried out in an especially  
14 cruel and callous manner in that you shot your  
15 vulnerable, estranged wife in the chest and  
16 knee. And she died due to gunshot wounds to the  
17 chest and injuries to the head where you hit her  
18 as she lay dying on the bed. The offense was  
19 carried out in a dispassionate and calculated  
20 manner in that after reportedly telephoning and  
21 threatening the life of Robert Parsons you went  
22 to the victim's residence armed. The offense  
23 was carried out in a manner demonstrating  
24 exceptionally callous disregard for human  
25 suffering and you had previously ransacked your  
26 victim's home thereby instilling fear and terror  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 1 2/8/06

1 in her. Public safety was at risk. And you had  
2 a clear opportunity to cease but you continued.  
3 Sir, you have no record, prior record of  
4 violence or criminality. However, you do have a  
5 record of alcohol and poly-substance abuse to  
6 which you have readily admitted. As to your  
7 institutional behavior. You have programmed  
8 within -- I would say in a limited manner within  
9 the disability restraints that have been placed  
10 on you. You've been prevented from full work  
11 participation during your incarceration due to  
12 your disability. However, you're to be  
13 commended for the community college work that  
14 you have done. And you have done vocational  
15 work in sewing machines and appliance repair.  
16 You also have participated in AA, NA, Anger  
17 Management courses and you do have a relatively  
18 disciplinary-free misconduct record. You do,  
19 however, have one 115, 2004, for possession of  
20 contraband, and one 128(a), that was in 1994 for  
21 smoking. As to the psychological report dated  
22 December 29, 2005 by Dr. Macomber, it was  
23 generally supportive of release. As to your  
24 parole plans, you have what this Board considers  
25 questionable parole plans for residence in your  
26 last county -- excuse me -- in California. That

1 would be with your new wife, Elizabeth Bradshaw  
2 in Anaheim. Questionable because the two of you  
3 have never lived together. Are they realistic?  
4 I don't know. But we did discuss with you  
5 alternatives. And you have thought through  
6 alternatives. So that is -- you're to be  
7 commended for that and you do have that  
8 possibility in your mind. As to employment  
9 plans, obviously you are unable to work so you  
10 would be depending upon disability payments,  
11 which you have assured us -- and your wife also  
12 assures us -- is in progress such that you would  
13 be in receipt of disability upon parole. Penal  
14 Code 3042 responses indicate opposition to --  
15 finding of parole suitability, specifically by  
16 the District Attorney of Orange County. In a  
17 separate decision, the hearing Panel finds that  
18 it is not reasonable to expect that parole would  
19 be granted at a hearing during the following two  
20 years. Specific reasons for this finding are as  
21 follows. The Panel reviewed all information  
22 received from the public and we're relying on  
23 the following circumstances. The offense was  
24 carried out in an especially cruel and callous  
25 manner in that you shot your vulnerable,  
26 estranged wife in the chest and knee. And she  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 3 2/8/06

1 died due to gunshot wounds and to chest injuries  
2 to her head where you hit her as she lay dying  
3 on the bed. The offense was carried out in a  
4 dispassionate and calculated manner in that  
5 after reportedly telephoning and threatening the  
6 life of Robert Parsons you went to the victim's  
7 residence armed. The offense was carried out in  
8 a manner demonstrating exceptionally callous  
9 disregard for human suffering in that you had  
10 previously ransacked your victim's home thereby  
11 instilling fear and terror in her. There was  
12 also considerable risk to public safety in that  
13 others could have been injured or killed. Also,  
14 you had clear opportunity to cease but you  
15 continued your actions. Moreover, the motive  
16 for the crime was very trivial in relation to  
17 the offense in that it was jealousy and by your  
18 own testimony you said I couldn't let her go.  
19 In denying you parole for two years will place  
20 you on the 2008 calendar for your next  
21 subsequent hearing. If this decision is final,  
22 you will not get paroled. The Board will send  
23 you a copy of the decision. It will indicate  
24 the reasons you did not get paroled. If this  
25 decision is not final, the Board will set up  
26 another hearing. You can read the laws about  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 4 2/8/06

1 your hearing at California Code of Regulations  
2 Title 15, section 2041. The Board recommends no  
3 more 115's or 128(a)'s, get self-help and get  
4 therapy as it's available. And additionally,  
5 develop self-help techniques to assist you in  
6 dealing with the consequences of this grave  
7 offense. Continue reaching out to help others.  
8 Sir, when self-help is not available in terms of  
9 programs, you can read. I'm sure you do read.  
10 And you can make book reports to this Panel.  
11 And sir, our concern is that you chose a method  
12 in this crime that is not really age dependent.  
13 And our concern is that we see before us a man  
14 who has somewhat accepted and is on the road to  
15 accepting what you have done. And I understand  
16 that it's -- it's clear that it's very damaging  
17 to you. In order for you to not be a risk, we  
18 need to see that you are strong enough, that the  
19 next stressful situation that could occur will  
20 not break you down and have something terrible  
21 occur as a result in terms of public safety.  
22 That is the concern. So we feel that you would  
23 benefit from further time here. Basically to  
24 get yourself together and get a grip and feel  
25 that you are not the center of your universe  
26 anymore because of your ability to reach out, to  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 5 2/8/06

1 actually not make it not all about you. But  
2 reaching out to assist others and making that  
3 the focus of your life so that you can move on  
4 we feel will be a much healthier, much more risk  
5 free environment in which to move you out into  
6 the civilized world again. Commissioner, do you  
7 have any further --

8 DEPUTY COMMISSIONER FILANGERI: Yeah.  
9 Thanks. You know, until this Panel believes  
10 your release wouldn't amount to an unreasonable  
11 risk to public safety, you can't be granted a  
12 date. And I got to tell you that there's plenty  
13 of opportunities for you to suffer rage on  
14 release. There's more opportunities today. I  
15 don't know if you've heard of road rage and all  
16 the sorts of things that's going on from the  
17 stressful situations in our communities today.  
18 There's more opportunities today than there were  
19 then. You don't just have to pull a trigger to  
20 be a danger to public safety. So what we're  
21 concerned with is how many tools -- what tools  
22 do you have to deal with this rage. Because  
23 we're primarily concerned -- is how much -- how  
24 much risk would you be to public safety. Well  
25 one thing we could do is we could wait until you  
26 become harmless because you're too old to be a  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 6 2/8/06

1 risk. We don't want to do that. That could  
2 take a long time. Another way we could do -- is  
3 wait for you to program to the point that you're  
4 no longer a risk. Truth is, I don't think CDC  
5 has the programs available for that. And you're  
6 liable to end up becoming too old to be a risk  
7 if you wait for them to give you the programs.  
8 I mean they're focusing their treatment on  
9 psychotics and stuff like that, mentally ill  
10 people, people that are -- that need this kind  
11 of help. I'm afraid there's not much  
12 opportunity for you. So what we're going to  
13 suggest you do is study. I think you should try  
14 to make some sort of appointment with one of the  
15 psychologists here, take it as an assignment  
16 from us that you want to study about rage. And  
17 if he'll go for it, I'm not sure that this is  
18 the institution that's doing that, some of the  
19 psychologists will let you write reports about  
20 what -- about the books -- the books you could  
21 read on this that they would direct you toward.  
22 Now, one of the things that went into our  
23 decision about the two year denial, we've got --  
24 we've got sufficient reason for a two-year  
25 denial, but I want you to know that there was  
26 one thing that we thought about was this hearing  
27 WILLIAM BRADSHAW D-73217 DECISION PAGE 7 2/8/06

1 was pretty stressful for you, I know. And we  
2 didn't want to put you through this kind of  
3 stress year after year after year without making  
4 any progress. What we're asking you to do is  
5 make a lot of progress and you probably couldn't  
6 do that in a year if you started today. So we  
7 think the two year denial is in a way better for  
8 you. Because you won't have to be back here one  
9 year before -- we know you're going -- you're  
10 not going to be prepared. Whereas in two years  
11 there's a real chance, I'm not making any  
12 promises, but there's a real chance you'll be  
13 more favorably considered if you do what we say.  
14 I truly do want to wish you the best of luck.  
15 Thank you.

16 PRESIDING COMMISSIONER BRYSON: I do too.  
17 Good luck.

18 INMATE BRADSHAW: Thank you.

19 PRESIDING COMMISSIONER BRYSON: And the  
20 time -- This concludes the hearing. And the  
21 time is 1653.

22 --oo--

23 PAROLE DENIED TWO YEARS JUN 8 2006  
24 THIS DECISION WILL BE FINAL ON \_\_\_\_\_  
25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.

27 WILLIAM BRADSHAW D-73217 DECISION PAGE 8 2/8/06

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CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, Marsha Mees, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 85, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of WILLIAM BRADSHAW, CDC No. D-73217 on FEBRUARY 8, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated February 24, 2006 at Sacramento County, California.

  
\_\_\_\_\_  
Marsha Mees  
Transcriber  
PETERS SHORTHAND REPORTING

# LODGEMENT II

ORANGE COUNTY SUPERIOR COURT ORDER (i.e.  
REASONED OPINION DENYING RELIEF

LODGEMENT II

**SUPERIOR COURT . THE STATE OF CALIFORNIA, COUNTY OF ORANGE**

**MINUTE ORDER**

**Case Number M-10957 X A**

**People Vs Bradshaw, William**

**Report Request Criteria**

- |                          |                   |
|--------------------------|-------------------|
| 1. Docket Date Range     | : Date filter     |
| 2. Sequence Number Range | : Sequence filter |
| 3. Docket Category       | : Category filter |

<u>Docket Dt</u>	<u>Seq</u>	<u>Text</u>
8/18/2006	1	Hearing held on 08/18/2006 at 09:00 AM in Department C5 for Chambers Work.
	2	Officiating Judge: Robert R. Fitzgerald, Judge
	3	Clerk: L. Torres
	4	No Court Reporter present at proceedings.
	5	No appearances
	6	Order denying Writ of Habeas Corpus filed.
	7	Petition for Writ of Habeas Corpus is denied for the reasons stated in the order denying writ filed 07/25/2006.
	8	As ordered, the clerk this date has mailed a copy of this minute order to the Petitioner at WILLIAM BRADSHAW CDC #D-73217 GW-325L CORRECTIONAL TRAINING FACILITY P.O. BOX 689 SOLEDAD, CA 93960-0689.
	9	The clerk this date has forwarded a copy of this minute order to Orange County District Attorney's Office.

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER  
AUG 18 2006  
ALAN SLATER, Clerk of the Court  
BY: *J.P. Taxis*, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

In re

CASE NO. M-10957

**WILLIAM BRADSHAW,**

Petitioner,

ORDER

ON HABEAS CORPUS.

TO THE PETITIONER AND THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, HAVING RECEIVED THE PETITION FOR WRIT OF HABEAS CORPUS, THE COURT FINDS AND ORDERS AS FOLLOWS:

In 1987, Petitioner entered a guilty plea to second degree murder with use of a firearm and was sentenced to 17 years to life. He became eligible for parole in 1998. He has had four previous parole hearings. At his third and fourth hearings, in 2003 and 2004 respectively, parole was denied for one year. Petitioner's fifth subsequent parole hearing took place in February 2006. Parole was denied for two years.

The Board of Parole Hearings (hereafter individually and collectively referred to as "the BPH") found Petitioner would pose an unreasonable risk of danger to society or a threat to public safety at this time if he were released. In announcing its decision, the BPH stated it relied on the "following circumstances." It then recited the facts of Petitioner's commitment offense.

Petitioner discovered his estranged wife was having an affair. Petitioner telephoned her and told

her he was coming to her residence to kill the man she was involved with. When Petitioner arrived at the residence, however, the man was not there. Petitioner fired the gun at his estranged wife twice and then hit her in the head with the gun. She sustained bullet wounds to the knee and the chest, as well as head injuries. She died from the chest wound and the head injuries. Petitioner turned himself in to police shortly after the crime. At his parole hearing, Petitioner admitted all responsibility for his crime and expressed remorse.

Petitioner was virtually a model prisoner. The BPH acknowledged Petitioner's prison conduct was "relatively disciplinary-free" and commended him for his educational and vocational work. Petitioner had also participated in AA, NA, and Anger Management programs. The BPH was not entirely satisfied with Petitioner's parole plans, describing them as "questionable" because Petitioner had remarried while in prison and had never actually lived with his present wife. The BPH stated that Petitioner's psychological report was "generally supportive of release." Nevertheless, the BPH concluded it would not grant parole, and moreover it was not reasonable to expect parole to be granted for two years. The BPH denied parole for two years.

The BPH told Petitioner its "concern is that we see before us a man who has somewhat accepted and is on the road to accepting what you have done. . . . In order for you to not be a risk we need to see that you are strong enough, that the next stressful situation that could occur will not break you down and have something terrible occur as a result in terms of public safety. That is the concern. So we feel that you would benefit from further time here."

It continued, "You know, until this Panel believes your release wouldn't amount to an unreasonable risk to public safety, you can't be granted a date. And I got [sic] to tell you that there's [sic] plenty of opportunities for you to suffer rage on release. There's [sic] more opportunities today. I don't know if you've heard of road rage and all the sorts of things that's [sic] going on from the stressful situations in our communities today. There's [sic] more opportunities today than there were then. You don't just have to pull a trigger to be a danger to public safety. So what we're concerned with is how many tools – what tools do you have to deal with this rage. Because we're primarily concerned – is how much – how much risk would you be to public safety. . . ."

The BPH then voiced its opinion the prison system probably did not have the specific programs available that Petitioner needed, because Petitioner did not have an ongoing problem with drugs or alcohol, nor was he psychotic or mentally ill. Rather, the BPH suggested to Petitioner he would need to read and study on his own or perhaps with the help of the prison psychologist, to understand and cope with rage.

The BPH concluded its comments explaining, "Now, one of the things that went into our decision about the two-year denial . . . What we're asking you to do is make a lot of progress and you probably couldn't do that in a year if you started today. So we think the two-year denial is in a way better for you. Because you won't have to be back here one year before . . . you're not going to be prepared. Whereas in two years there's a real chance . . ."

### II

Petitioner lists multiple grounds for relief. He argues his plea agreement was rendered "constitutionally invalid" when the BPH "illegally withheld his reciprocal benefit of lessened punishment for the fifth time." He states the BPH defined his offense as more serious than the crime to which he pleaded guilty. He contends the BPH violated his liberty interest in parole and his due process rights under the state and federal constitutions. Petitioner also argues the particular District Attorney (DA) who appeared at the hearing objects to all paroles, and so BPH reliance on the DA objection is an abuse of discretion. Petitioner contends the BPH acted arbitrarily and capriciously when it relied on its incorrect characterization of his parole plans as "questionable." He states the BPH routinely ignores the expert evidence of mental health department professionals. Petitioner also argues the BPH violated his due process rights by relying on the unchanging circumstances of the commitment offense and ignoring evidence of his rehabilitation. Petitioner contends the two-year denial was arbitrary and violated due process. Finally, Petitioner states the BPH illegally applies a no-parole policy to term-to-life prisoners.

### III

The BPH may deny parole if it determines the gravity of the commitment offense is such that consideration of public safety requires more incarceration. (Pen. Code, § 3041, subd. (b); *In re Dannenberg* (2005) 34 Cal.4th 1061, 1070-1071 [BPH "may protect public safety" by

"considering the dangerous implications" of the commitment offense].) Thus, while the BPH must point to factors "beyond the minimum elements of the crime . . . it need engage in no further comparative analysis before concluding that the particular facts of the offense make it unsafe, at that time, to fix a date for the prisoner's release." (*In re Dannenberg*, *supra*, at p. 1071.) In other words, if the BPH determines the gravity of the commitment offense "is such that consideration of the public safety requires a more lengthy period of incarceration," it may deny parole without proceeding to consider and analyze the other suitability factors such as prison behavior and parole plans. (*Ibid.*)

That is precisely what occurred here. The BPH verbalized that its concern was "the next stressful situation that could occur" and stated it could not grant Petitioner a parole date until it believed his release would not present an unreasonable risk to public safety. It then expressed that there are many opportunities for rage to occur in our communities today. It wanted Petitioner to have the tools he needed to deal with rage, because its primary concern was "how much risk [he] would be to public safety."

In denying parole for two years, the BPH mentioned Petitioner's parole plans, but it relied on its belief that Petitioner would present an unreasonable risk to public safety if released immediately. Likewise, in announcing a two-year denial, the BPH explained to Petitioner that the prison system probably could not offer him the program he needed and he would have to undertake a particular self-study. It estimated the self-study would take two years. To return for an earlier parole hearing would be a stress and would result in frustration.

Thus the BPH's two-year denial was supported by the circumstances of the commitment offense and by its particular instructions to Petitioner. The BPH therefore acted lawfully and did not violate constitutional or statutory law in reaching its decision. (Pen. Code, § 3041, subd. (b); *In re Dannenberg* (2005) 34 Cal.4th 1061, 1070-1071.) The petition is denied on that basis.

(*Ibid.*)

#### IV

The petition for a writ of habeas corpus is DENIED.

DATED: 8-18-06

  
JUDGE OF THE SUPERIOR COURT

# LODGEMENT III

COURT OF APPEALS ORDER DENYING RELIEF

LODGEMENT III

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL - 4TH DIST DIV 3  
APR 6 FILED

DIVISION THREE

NOV 3 6 2006

In re WILLIAM BRADSHAW  
on Habeas Corpus.

G037697 Deputy Clerk \_\_\_\_\_

(Super. Ct. No. M10957)

O R D E R

THE COURT:\*

The petition for a writ of habeas corpus is DENIED.

**ARONSON, J.**

\_\_\_\_\_  
**ARONSON, ACTING P. J.**

\* Before Aronson, Acting P. J., Fybel, J., and Ikola, J.

# LODGEMENT IV

SUPREME COURT (STATE) PETITION FOR REVIEW

LODGEMENT IV

1                   IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
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4                   In re WILLIAM BRADSHAW                   Case No. \_\_\_\_\_  
5  
6                   On Habeas Corpus  
7  
8  
9

10                  PETITION FOR REVIEW

11                  After the Decision by the Court of Appeal  
12                  Fourth Appellate District, Division 3  
13                  Case No. G037697 filed October 6, 2006  
14                  Denied November 30, 2006.  
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WILLIAM BRADSHAW D-73217  
PETITIONER IN PRO PER  
P.O. BOX 689  
SOLEDAD, CA 93960-0689

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1 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
2

3 In re WILLIAM BRADSHAW } Case No. \_\_\_\_\_  
4 } Criminal C-62913  
5 On Habeas Corpus } Orange County Superior Court  
6 } Case No. M-10957  
7 \_\_\_\_\_ } Fourth District Appellate Court  
8 \_\_\_\_\_ } Division 3 Case No. G037697

9  
10 TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE  
11 ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

12 PETITION FOR REVIEW

13 Petitioner petitions this court for review following the decision of  
14 the Court of Appeal, Fourth Appellate District, Division 3, filed in that  
15 Court October 6, 2006. A copy of the opinion of the Court of Appeal is  
16 attached as Exhibit 'A'.

17 QUESTIONS PRESENTED

- 18 1. In light of the recent decisions upheld/handed down by this Court in  
19 Rosenkrantz (Los Angeles County Superior Court Case No. BH003529, June  
20 26, 2006, Second District Appellate Court 7/31/06, California Supreme  
21 Court 8/03/06), Wen Lee (DJDAR 2006 13961) and Jeffrey Elkins 2006  
22 DJDAR 14489), is the Board of Parole Hearings (BPH) violating  
23 Petitioner's state and federal due process protections by denying him  
24 parole for the fifth time based on the unchanging circumstances of  
25 his offense after more than 20 years of model behavior and  
26 rehabilitation exhibited during his incarceration.  
27 2. Does the BPH violate Petitioner's Plea Bargain by recharacterizing  
28 his offense as one carrying a more severe penalty than that to which  
he pled and the state agreed?

- 1       3. Is the BPH violating Petitioner's State and Federal Due Process by  
2       denying him parole based on factors that clearly amount to Circumstances  
3       Tending to Show Suitability according to their own regulations?
- 4       4. Is the BPH violating Petitioner's State and Federal Due Process by  
5       relying on allegations made by the District Attorney's office that  
6       were never proven to be true or pled to by Petitioner?
- 7       5. Is the BPH violating Petitioner's State and Federal Due Process by  
8       requiring him to have parole plans in excess of that required by their  
9       own regulations?
- 10      6. Is the BPH violating Petitioner's State and Federal Due Process by  
11      ignoring the Expert Witness Testimony in the Psychological Evaluation  
12      and substituting their own unqualified opinion and ordering therapy  
13      in violation of their own regulations?
- 14      7. Is the BPH exhibiting contempt of court when imposing a multi-year  
15      denial to Petitioner when his previous two hearings only resulted  
16      in a one year denial and there was no legitimate reason for the multi-  
17      year denial other than the BPH's illegal order for self-therapy?
- 18      8. Is the BPH relying on a sub rosa No/Anti or Under-Inclusion Parole  
19      Policy for all Term-To-Life-Prisoners (TTLP) when they continue to  
20      deny more than 90% of all those appearing at hearings based on the  
21      "Exceptional" gravity of their offenses regardless of the degree or  
22      circumstances?
- 23      9. Are the State Courts denying Petitioner his First Amendment rights  
24      under the U.S. Constitution to petition the government for redress  
25      of grievances when they disregard grounds submitted?

26

27

28

**NECESSITY FOR REVIEW**

2 A grant of review and resolution of these issues by the Court is  
3 necessary to secure uniformity of decision and to settle important questions  
4 of law. The need for uniformity of decision is demonstrated by a comparison  
5 of this case with the factually similar cases of In re Rosenkrantz (2006)  
6 Los Angeles County Superior Court Case No. BH003529 decided June 26, 2006  
7 and which this Court upheld 8/03/06, In re Wen Lee (DJDAR 2006 13961),  
8 In re Jeffery David Elkins (DJDAR 2006 14489), In re Ramirez (2002) 94  
9 Cal.App.4th 549 which resulted in court findings opposite to that in  
10 Petitioner's case.

Petitioner respectfully submits that viewing these cases together demonstrates the lack of uniformity in application of the "some evidence" and "due process" standards and that the decision in the instant case conflicts with the recently announced State "some evidence" and "Due Process" standards in the state cases listed ante, and the Federal "some evidence" and "Due Process" standards delineated in Sanchez v. Kane 444 F.Supp.2d 1049 (C.D.Cal. 2006) Rosenkrantz v. Marshall 444 F.Supp.2d 1063 (C.D.Cal. 2006), Biggs v. Terhune (9th Cir. 2003) 334 F.3d 910, Blakely v. Washington (2004) 124 S.Ct. 2531.

20 This case also provides this Court with an opportunity to refine the  
21 meaning of the "particularly egregious" standard found in In re Ramirez,  
22 supra, 94 Cal.App.4th 549, and In re Rosenkrantz, supra, 29 Cal.4th 616,  
23 and to bring it and other standards such as liberty interest and some  
24 evidence into line with noted rulings.

Also, this case provides the Court with an opportunity to determine the several other questions presented ante in an effort to clearly define how the Board should employ state statute and its own regulations and when it may defer to its own discretion and set them aside as they have here.

## INTRODUCTION

2 On February 8, 2006 Petitioner appeared before the Board of Parole  
3 Hearings for his fifth parole consideration hearing and was found unsuitable  
4 and denied parole for two (2) years. Petitioner's MEPD was February 10,  
5 1998, eight (8) years before this hearing.

6 Petitioner was contractually convicted by plea agreement of a 15 years  
7 to life second degree murder (with a 2 year enhancement for use of a  
8 firearm), in Orange County Superior Court (Case No. C-62913) for the murder  
9 of his estranged wife. Petitioner admitted and accepted responsibility  
10 for his actions at his parole hearing. Since Petitioner was contractually  
11 convicted of a 15 years to life second degree murder by plea agreement  
12 with the state, all parties, (the state, the executive and the court),  
13 must view his criminal conduct solely as a 15 years to life second degree  
14 murder WITHOUT SPECIAL CIRCUMSTANCES. Further, the parties are precluded  
15 from characterizing his offense and/or criminal conduct as including any  
16 action defining it as one with special circumstances such as torture or  
17 activities akin to torture, etc.

18. Additionally, the Board may not rely on allegations not found to be  
19. true by a trier of fact or otherwise pled as reasons to deny parole (Blakely  
20. v. Washington, *supra*, (2004) 124 S.Ct. 2531.

21 While the Board did not say they were relying SOLELY on the Gravity  
22 of the Commitment offense, the other findings mentioned, Need for Self-  
23 Help/Therapy, Institutional Behavior, Parole Plans, and Opposition by the  
24 District Attorney are baseless, unsupported by the evidence, and/or are  
25 NOT circumstances on which a denial of parole may legally be based.

26 Repeatedly relying on the gravity of the offense, an unchanging factor  
27 of some 20 years past, denies Petitioner of his Liberty Interest in parole  
28 triggering the Due Process Clauses of the State and Federal Constitutions.

## ARGUMENT I

THE BOARD DEPRIVED PETITIONER OF HIS LIBERTY INTEREST IN PAROLE AND VIOLATED HIS STATE AND FEDERAL DUE PROCESS RIGHTS BY REPEATEDLY DENYING HIM PAROLE BASED ON THE UNCHANGING CIRCUMSTANCES OF THE OFFENSE AND IGNORING HIS PLEA BARGAIN, THE EVIDENCE OF HIS REHABILITATION, PROGRAMMING AND EXEMPLARY POST CONVICTION BEHAVIOR. THE ORANGE COUNTY SUPERIOR COURT'S DECISION UPHOLDING THE BOARD'S DENIAL IS BOTH "CONTRARY TO" AND "AN UNREASONABLE APPLICATION" OF U.S. SUPREME COURT PRECEDENT.

For the FIFTH time Petitioner appeared before the Board for parole consideration and was denied because of the unchanging circumstances of his offense, institutional behavior, alleged inadequacies of his parole plans, DA opposition and need for more self-help programming.

Section 3041 of the California Penal Code creates in every inmate a cognizable liberty interest in parole which is protected by the procedural safeguards of the Due Process Clause [citations]... [and] the due process protections of the California Constitution. Th[is] liberty interest is created, not upon grant of parole, but upon the incarceration of the inmate. (Biggs v. Terhune, supra, (9th Cir. 2003) 334 F.3d 910, 914-915. cf. McQuillion v. Duncan, (9th Cir. 2002) 306 F.3d 895, 903).

Therefore, not only must "some evidence" support the [Board's] decision... [that] evidence... must have some indicia of reliability. (Biggs v. Terhune, supra, citing McQuillion, supra, at 904. See also Jancsek v. Oregon Board of Parole, (9th Cir. 1987) 833 F.2d 1389, 1390 [adopting the "some evidence" standard set forth by the Supreme Court in Superintendent v. Hill (1985) 472 U.S. 445, 456].)

In Biggs, a case with situational factors more egregious than Petitioner's and a prison performance record analogous to the one in this case, the Court held that when a prisoner has behaved in a criminal and disciplinary free manner over a long term, a Board finding that he has an escalating pattern of criminal history relying solely on his pre-prison conduct would not satisfy the necessary indicia of reliability and thus would be devoid of evidentiary support (Id at 916). Biggs also held that when a prisoner has engaged in rehabilitation type programming such as self-help groups, vocational and educational courses, etc... for an extended

1 period of time, in Biggs' case over 13 years, during which time he has  
2 remained disciplinary free, the Board can not find that his gains are recent  
3 because the evidence demonstrates otherwise (Id at 917). Logical analysis  
4 and court findings which equally apply to Petitioner's similar prison record  
5 and much lower offense degree render VOID the Board's findings that  
6 Petitioner is currently a threat to society because of opposition by the  
7 DA, 1 non-serious disciplinary infraction, their CONTRADICTORY and  
8 UNQUALIFIED assessment of a need for self-help/therapy, and the unchanging  
9 circumstances of the offense.

10 The Board's other non-offense related reason for denying Petitioner  
11 parole, their conclusion this his parole plans were questionable because  
12 "...your parole plans... for residence... with your wife... the two of  
13 you have never lived together." exceeded the authority/discretion granted  
14 the Board under their own rules, CCR § 2402(d)(8) which only allows the  
15 Board to assess whether "[t]he prisoner has made realistic plans for release  
16 or has developed marketable job skills that can be put to use upon release."  
17 Additionally, no other Board panel has ever found Petitioner's Parole Plans  
18 to be inadequate or questionable.

19 The Board has found Petitioner unsuitable for parole in each of his  
20 5 parole hearings. Following is a list of their determinations and/or  
21 findings.

22 1997 - 2 year denial

23 Commitment Offense  
24 Unstable Social History  
24 Psychological report not totally supportive.

25 1999 - 4 year denial

26 Commitment Offense  
27 Unstable Social History  
27 Need for Self-Help/Therapy  
28 Opposition by the DA - Escalating Pattern of criminal conduct.

1 2003 - 1 year denial

2 Commitment Offense  
 3 Unstable Social History  
 4 Need for Self-Help/Therapy  
 5 Opposition by the DA & Anaheim P.D.

6 2004 - 1 year denial

7 Commitment Offense  
 8 Unstable Social History  
 9 Need for Self-Help/Therapy  
 10 Opposition by the DA

11 2006 - 2 year denial

12 Commitment Offense  
 13 Need for Self-Help/Therapy  
 14 Opposition by the DA  
 15 Institutional Behavior  
 16 Parole Plans

17 As is evident by these decisions, the Board has repeatedly relied  
 18 upon the circumstances of the commitment offense and conduct prior to  
 19 imprisonment to find Petitioner unsuitable. Their continued reference to  
 20 "Need for Self-Help/Therapy" is contradictory to the EXPERT WITNESS  
 21 TESTIMONY submitted in the Psychological Reports prepared expressly for  
 22 the Board. The opposition by the DA is NOT a reason upon which parole denial  
 23 can be based unless it shows "some evidence bearing an indicia of  
 24 reliability" that Petitioner is a current, unreasonable risk of threat  
 25 to the public safety.

26 The Biggs court held that:

27 The Parole Board's sole supportable reliance on the gravity  
 28 of the offense and conduct prior to imprisonment to justify  
 29 denial of parole can be initially justified as fulfilling the  
 30 requirements set forth by state law. Over time however, should  
 31 Biggs continue to demonstrate exemplary behavior and evidence  
 32 of rehabilitation, denying him a parole date simply because  
 33 of the nature of his offense and prior conduct would raise  
 34 serious questions involving his liberty interest in parole...  
 35 A continued reliance on the circumstances of his offense...  
 36 runs contrary to the rehabilitative goals espoused by the prison  
 37 system and could result in a due process violation (Id p. 916).

38 It is important to note that the Biggs court referred to a "sole

1       supportable reliance on the... offense" and did not say "sole reliance".  
 2 This is important because the Board routinely gives additional reasons  
 3 (completely unsupported by the record and usually contradictory thereof),  
 4 for parole denial so as to avoid a critical review by the courts.

5       Additionally, most lower courts do not address the several grounds  
 6 presented (as is the case here), relying only on the "some evidence" as  
 7 related to the offense and cite to this Court's ruling in In re Dannenberg  
 8 (2005) 34 Cal.4th 1061, 1071.

9       Would the lower courts give a reasoned opinion on all the  
 10 grounds/issues presented the arbitrary and capricious nature of the Board's  
 11 decision-making would be revealed.

12       The Board's finding that Petitioner's offense was "carried out in  
 13 an especially cruel and callous manner... in a dispassionate... calculated  
 14 manner... demonstrating exceptionally callous disregard for human suffering"  
 15 can not possibly be ACCURATE since Penal Code § 190.2 holds that any murder  
 16 involving elements of torture or that unnecessarily inflicted victim  
 17 suffering requires a conviction of First Degree Murder with a finding of  
 18 Special Circumstances and a sentence of Life Without Parole (In re  
 19 Rosenkrantz 80 Cal.App.4th 409, 419-420).

20       The state bargained away their ability to CONTEND First Degree Murder  
 21 and Special Circumstance allegations in Petitioner's case as part of the  
 22 Plea Bargain where they contractually agreed that his punishment would  
 23 be in accordance with a second degree murder conviction (Penal Code §§  
 24 1192.1 & 1192.5).

25       While the Board's discretion in parole matters is broad, it does not  
 26 have the authority to recharacterize Petitioner's offense as one carrying  
 27 a more severe penalty than that to which was agreed upon by the state (In  
 28 re Ramirez, *supra*, (2001) 94 Cal.App.4th 549, fn. 8 at p. 569), and deny

1 him his guaranteed Liberty Interest in Parole.

2 Since California's parole statutes create a liberty interest in parole  
 3 and an expectancy of release, prisoners are entitled to constitutional  
 4 protection. The Board's denial of parole must be supported by "some  
 5 evidence" which establishes a prisoner is not rehabilitated and is currently  
 6 an unreasonable threat to public safety. Evidence which fails this test  
 7 lacks the requisite "indicia of reliability" and fails to satisfy the due  
 8 process standards identified in Biggs v. Terhune, supra, at pp. 914-917.  
 9 In addition, the Board's decision must follow the Ramirez, supra, decision  
 10 defining mandatory parole decision guidelines specified on pp. 569-570,  
 11 requiring a panel to consider that:

12 All violent crimes demonstrate the perpetrator's potential  
 13 for posing a grave risk to public safety, yet parole is  
 14 mandatory for violent felons serving determinate sentences.  
 15 (Penal Code § 3000 subd. (b)(1)). And the legislature has  
 16 clearly expressed its intent that when murderers - who are  
 17 the majority of inmates serving indeterminate sentences -  
 18 approach their minimum eligible parole date, the board 'shall  
 19 normally set a parole date.' (Penal Code § 3041 subd. (a)).  
 20 The Board's authority to make an exception based on the gravity  
 21 of the a life term inmate's current or past offense should  
 22 not operate so as to swallow the rule that parole is 'normally'  
 23 to be granted. Otherwise, the Board's case by case rulings  
 24 would destroy the proportionality contemplated by Penal Code  
 25 section 3041, subdivision (a), and also the murder statutes,  
 26 which provide distinct terms of life without the possibility  
 27 of parole, 25 years to life, and 15 years to life for various  
 28 kinds and degrees of murder (Penal Code § 190 et seq.)"

29 The federal courts have adopted this reasoning and have defined it  
 30 further. One Federal District Court has explained the Biggs rationale as  
 31 follows:

32 Whether the facts of the crime of conviction, or other unchanged  
 33 criteria affect the parole eligibility decision can only be  
 34 predicated on the "predictive value" of the unchanged  
 35 circumstance. Otherwise, if the unchanged circumstance can  
 36 be used to deny parole eligibility, sentencing is taken out  
 37 of the hands of the judge and totally reposed in the hands  
 38 of the BPT. That is, parole eligibility could be indefinitely  
 39 and forever delayed based on the nature of the crime even though  
 40 the sentence given set forth the possibility of parole - a

1 sentence given with the facts of the crime fresh in the mind  
 2 of the judge. While it would not be a constitutional violation  
 3 to forego parole altogether for certain crimes, what the state  
 4 cannot constitutionally do is have a sham system where the  
 5 judge promises the possibility of parole, but because of the  
 6 nature of the crime, the BPT effectively deletes such from  
 7 the system. Nor can a parole system, where parole is mandated  
 8 to be determined on someone's future potential to harm the  
 9 community, constitutionally exist where despite 20 or more  
 10 years of prison life which indicates the absence of danger  
 11 to the community in the future, the BPT commissioners' revulsion  
 12 towards the crime itself, or some other unchanged circumstance,  
 13 constitutes the alpha and omega of the decision. Nobody elected  
 14 the BPT commissioners as sentencing judges. Rather, in some  
 15 realistic way, the facts of the unchanged circumstance must  
 16 indicate a present danger to the community if released, and  
 17 this can only be assessed not in a vacuum, after four or five  
 18 eligibility hearings, but counterpoised against the backdrop  
 19 of prison events. (Bair v. Folsom Prison 2005 WL 2219220, \*12  
 20 n. 3 (E.D.Cal. 2005), report and recommendation adopted by  
 21 2005 WL 3081634 (E.D.Cal. 2005))

22 On June 26, 2006, the Los Angeles Superior Court issued a ruling (Case  
 23 No. BH003529, In re Robert Rosenkrantz), which was upheld by the SECOND  
 24 APPELLATE DISTRICT and the CALIFORNIA SUPREME COURT holding:

25 The court finds that petitioner's continual parole denials  
 26 have been based mainly on the gravity of the commitment offense,  
 27 the circumstances of which can never change. Therefore, the  
 28 Board's continued sole reliance on the commitment offense will  
 essentially convert petitioner's original sentence of life  
 with possibility of parole into a sentence of life without  
 the possibility of parole. Petitioner has no chance of obtaining  
 parole unless the Board holds that his crime was not serious  
 enough to warrant a denial of parole. (citing Irons v. Warden  
 (E.D.Cal. 2005) 358 F.Supp.2d 936, 947.)

29 The Rosenkrantz court further ruled that:

30 Petitioner has now served in excess of the maximum sentence  
 31 for both second degree and first degree murder [when good-time  
 32 credits were applied]. Therefore, the commitment offense should  
 33 no longer function as a factor for unsuitability and in that  
 34 case, it should no longer operate as "some evidence" to support  
 35 the Board's parole denial. Petitioner has reached the point  
 36 in which the denial of parole can no longer be justified by  
 37 reliance on his commitment offense. The Board's continued  
 38 reliance on the circumstances of the offense runs contrary  
 39 to the rehabilitative goals espoused by the prison system  
 40 and has violated petitioner's due process.

1                   Simultaneously, the Western Division of the United States Central  
 2 District Court, in Rosenkrantz v. Marshall 444 F.Supp.2d 1063 (C.D.Cal.  
 3 2006) ruled EXACTLY the same while citing to NUMEROUS other District and  
 4 Appellate Court decisions with equivalent holdings.

5                   Paralleling Petitioner's case this Rosenkrantz court found:

6                   ...every psychological examination performed on petitioner  
 7 has confirmed, petitioner's crime was the result of significant  
 8 stress in his life, a factor that actually weighs in favor  
 9 of parole suitability. 15 Cal. Code Regs. § 2402(d)(4). See  
Scott, 133 Cal.App.4th at 595-596, 34 Cal.Rptr.3d 905 (finding  
 10 that the Governor erred by failing to consider in petitioner's  
 11 favor the undisputed evidence that the inmate committed his  
 12 offense under emotional stress).

13                   Second, in this case, the circumstances of petitioner's crime  
 14 do not amount to some evidence supporting the conclusion that  
 15 petitioner poses an unreasonable risk of danger if released.  
 16 As discussed, "[i]n the parole context, the requirements of  
 17 due process are met if some evidence supports the decision." Significantly,  
 18 the evidence underlying the decision must be supported by "some finding of reliability." Biggs, supra, 334  
 19 F.3d at 914 (internal quotations omitted); Caswell, 363 F.3d  
 20 at 839; see Hill, 472 U.S. at 455-456. Otherwise it does not  
 21 constitute "some evidence". See Gerald L. Neuman, The  
 22 Constitutional Requirement of "Some Evidence", 25 San Diego  
 23 L.Rev. 631, 663-664 (1988) (noting that "[e]vidence that the  
 24 respondent was alive at the time in question is usually relevant  
 25 to any charge against her. The [due process] protection of  
 26 the "some evidence" requirement demands more than that - less  
 27 than legal 'sufficiency' of evidence, but more than a trivial  
 28 charade.").

29                   The Board is required to determine whether Petitioner presents a  
 30 CURRENT UNREASONABLE risk of threat to public safety if released (PC §  
 31 3041(b); 15 CCR § 2402), based upon reliable evidence. In this case the  
 32 Board claimed that Petitioner posed an unreasonable risk of danger, and  
 33 was therefore unsuitable for parole, "because of the following  
 34 circumstances" and then recited the facts of Petitioner's commitment  
 35 offense.

36                   The Rosenkrantz court found this type of reasoning insufficient  
 37 stating:

1           While relying upon petitioner's crime as an indicator of his  
 2 dangerousness may be reasonable for some period of time, in  
 3 this case, continued reliance on such unchanging circumstances  
 4 - after nearly two decades of incarceration and half a dozen  
 5 parole suitability hearings - violates due process because  
 6 petitioner's commitment offense has become such an unreliable  
 7 predictor of his present and future dangerousness that it does  
 8 not satisfy the "some evidence" standard. After nearly twenty  
 9 years of rehabilitation, the ability to predict a prisoner's  
 10 future dangerousness based simply on the circumstances of his  
 11 or her crime is nil. See Johnson v. Fenn, 2006 WL 195159 \*8  
 12 n. 3 (E.D.Cal. 2006) (stating that "the seriousness of the  
 13 crime had predictive value for the dangerousness of petitioner's  
 14 release for the first, second, perhaps their suitability  
 15 hearing. But as the years go by, this factor loses its  
 16 predictive value in light of the growing experience to the  
 17 contrary (assuming petitioner's record in prison is  
 18 exemplary).") Irons, 358 F.Supp.2d at 947 n. 2 ("To a point,  
 19 it is true, the circumstances of the crime and the motivation  
 20 for it may indicate a petitioner's unsuitability, cruelty,  
 21 impulsiveness, violent tendencies and the like. However, after  
 22 fifteen or so years in the caldron of prison life, not exactly  
 23 an ideal therapeutic environment to say the least, and after  
 repeated demonstrations that despite the recognized hardships  
 of prison, this petitioner does not possess those attributes,  
 the predictive ability of the circumstances of the crime is  
 near zero.") Even the California courts have said as much in  
Shaputis, 135 Cal.App.4th at 231-232, 37 Cal.Rptr.3d 324 ("The  
 only evidence before the BPT was that [the inmate] had more  
 than a decade of demonstrated commitment to remaining sober,  
 and there was not a scintilla of violence in his nearly two  
 decades of incarceration. Accordingly, the BPT's conclusion  
 the inmate remained a danger to society, to the extent it was  
 premised on a former lifestyle that all of the evidence showed  
 was a historical relic, is so lacking in any medical,  
 psychological or behavioral evidentiary support that it is  
 arbitrary and capricious within the deferential standards...");  
Scott, 133 Cal.App.4th at 595, 34 Cal.Rptr.3d 905 ("The  
 commitment offense can negate suitability only if circumstances  
 of the crime reliably established by evidence in the record  
 rationally indicate that the offender will present an  
 unreasonable public safety risk if released from prison. Yet,  
 the predictive value of the commitment offense may be very  
 questionable after a long period of time.") (Id at 15-16)

24           Because there is no reliable evidence supporting the BPH's conclusion  
 25 that Petitioner is unsuitable for parole, that determination violates due  
 26 process. See Hill, supra, 472 U.S. at 455. The Superior Court's  
 27 determination to the contrary was based upon an unreasonable determination  
 28 of the facts in light of the evidence presented during the parole hearing

1 and amounted to an unreasonable application of clearly established Supreme  
 2 Court precedent. See Taylor v. Maddox, 366 F.3d 992, 999-1000 (9th Cir.),  
 3 cert. denied, 543 U.S. 1038, 125 S.Ct. 809, 160 L.Ed.2d 605 (2004).  
 4 Accordingly, Petitioner is entitled to relief. See McQuillian, 306 F.3d  
 5 at 912 (finding that petitioner was entitled to relief where none of the  
 6 four grounds for revision of petitioner's parole release date was supported  
 7 by "some evidence" and therefore the decision violated due process); Irons,  
 8 supra, 358 F.Supp.2d at 947-951 (granting habeas relief where the BPT  
 9 improperly relied upon the unchanging circumstances of the commitment  
 10 offense in finding petitioner unsuitable for parole in his fifth suitability  
 11 hearing, and also asserted that petitioner needed more therapy, a conclusion  
 12 that lacked any support in the record.); Saff' Ullah, 2005 WL 1555389 at  
 13 \*13-16 (granting habeas relief where the record contained no evidence  
 14 supporting the BPT's decision that petitioner was a danger to society and  
 15 unsuitable for parole based upon (a) his commitment offense, (b) his prior  
 16 criminal history, and (c) a rules violation which resulted when, based  
 17 upon his religious beliefs, petitioner refused to cut his hair).

18 The Court's ruling that "some evidence" existed to support the board's  
 19 finding of unsuitability, and a two year denial, is disingenuous at best.

20 The Board ordered Petitioner to conduct a self-study on rage implying  
 21 that he was an unreasonable risk to public safety because they were  
 22 concerned about "the next stressful situation that could occur", when (1)  
 23 there is not a scintilla of evidence indicating a need for "rage therapy"  
 24 in the record, and (2) this determination is completely contradictory of  
 25 Petitioner's Psychological Evaluations.

26 Additionally, no such study is available to Petitioner in prison,  
 27 a fact which the Board pointed out, and yet ordered it anyway.

28 Even IF Petitioner was in need of such therapy (which the record

1 clearly indicates he is not), this fact would be covered in the "Special  
 2 Conditions of Parole" under CCR § 2404(b) and therefore would NOT be a  
 3 reason for denying parole.

4 **ARGUMENT II**

5 THE SUPERIOR COURT OF ORANGE COUNTY AND THE FOURTH DISTRICT  
 6 APPELLATE COURT VIOLATED PETITIONER'S FIRST AMENDMENT RIGHT  
 7 UNDER THE U.S. CONSTITUTION TO PETITION THE GOVERNMENT FOR  
 8 REDRESS OF GRIEVANCES AS APPLICABLE THROUGH THE "DUE PROCESS  
 9 CLAUSE" OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION  
 BECAUSE THE COURT DISREGARDED GROUNDS WHICH INTERFERED WITH  
 HIS RIGHT TO BE HEARD UNDER PROCEDURE DUE PROCESS IDENTIFIED  
 IN Fuentes v. Shevin (1972) 407 U.S. 67, 32 L.Ed.2d 556, 92  
 S.Ct. 1983; THEREFORE BEING A MISCARRIAGE OF JUSTICE.

10 In California, Petitioner has the right to Habeas Corpus relief.  
 11 Specifically, Penal Code § 1473(a) provides that "Every person unlawfully  
 12 imprisoned or restrained of his liberty, under any pretense whatever, may  
 13 prosecute a writ of habeas corpus to inquire into the cause of such  
 14 imprisonment or restraint."

15 In Petitioner's case he caused an inquiry to be submitted to the Orange  
 16 County Superior Court and the Fourth District Appellate Courts, via petition  
 17 for writ of habeas corpus on eight (8) grounds, of which the Superior Court  
 18 only responded to two (2) of the filed grounds and the Appellate Court  
 19 issued a silent denial.

20 Here, the courts effectively chilled Petitioner's First Amendment  
 21 Right "to petition the government for redress of grievances," by refusing  
 22 to review and opine on all the grounds of constitutional magnitude as  
 23 briefed. Bradley v. Hall (9th Cir. 1995) 64 F.3d 1276 has identified this  
 24 right by unequivocally declaring: "The 'Government' to which the First  
 25 Amendment guarantees a right of redress of grievances includes the prison  
 26 authorities, as it includes other administrative terms and units of  
 27 Government." Clearly, the Judicial Branch is one of these units of  
 28 Government.

1           Simultaneous to Petitioner's right to petition for redress of  
 2 grievances (U.S. Constitutional Amendment I), he is to be afforded the  
 3 harmonized entitlement of being heard on his claims.

4           Fuentes v. Shevin, (1972) 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1983  
 5 has held:

6           For more than a century the central meaning of procedural due  
 7 process has been clear: "Parties whose right are to be affected  
 8 are entitled to be heard, and in order that they may enjoy  
 9 that right they must first be notified." [Citation omitted]  
 It is equally fundamental that the right to notice and an  
 opportunity to be heard "must be granted at a meaningful time  
 and in a meaningful manner [Cite omitted].

10          As Petitioner was petitioning the courts about wrongfully being denied  
 11 parole, and attacking specific reasons of the BPH's findings, he suffered  
 12 a denial of his Liberty Interest in parole release.

13          Being denied parole constitutes actual injury. Armstrong v. Davis,  
 14 (9th Cir. 2001) 275 F.3d 849, 864 declared:

15          Furthermore, as a consequence of the Board's unlawful  
 16 discrimination, plaintiffs were unable to comprehend various  
 17 parts of the parole and parole revocation process or were denied  
 18 the opportunity to attend the required hearings, and may even  
 have been wrongfully incarcerated or denied parole. This too  
 constitutes actual injury. (Emphasis added)

19          Strengthening the Armstrong v. Davis finding, McQuillen v. Duncan,  
 20 supra, (9th Cir. 2002) 306 F.3d 895 held, as premised on U.S. Supreme Court  
 21 principles:

22          We therefore hold that "clearly established Federal law, as  
 23 determined by the Supreme Court of the United States" provides  
 24 that California prisoners like McQuillen have a cognizable  
 liberty interest in release on parole.

25          Black's Law Dictionary, 6th Edition has identified under the definition  
 26 of Procedural Due Process:

27          [Procedural Due Process:] The guarantee of procedural fairness  
 28 which flows from both the Fifth and Fourteenth due process  
 clauses of the Constitution. For the guarantees of procedural

1 due process to apply, it must first be shown that a deprivation  
 2 of a significant life, liberty, or property interest has  
 3 occurred. This is necessary to bring the Due Process Clause  
 4 into play.

5 Therefore, based on the facts and authorities, Petitioner has clearly  
 6 first established that a deprivation of a significant liberty interest  
 7 has occurred. However, the question remains: What response should the  
 8 Superior Court and Appellate Court have concluded in answering all of the  
 9 grounds in the petition?

10 Here, Petitioner does not know because both said courts disregarded  
 11 the claims. Petitioner contends that he had a 'right of action' based on  
 12 his 'causes of action' that clearly identified other 'justiciable  
 13 controversy' not adjudicated by the court's decision. the court's refusal  
 14 to address all of Petitioner's grounds has caused a miscarriage of justice.

15 In arguendo, the 'miscarriage of justice' is stated in a *prima facie*  
 16 manner. The Superior Court when ruling on the certain grounds decided,  
 17 ruled against Petitioner. Minimally, the court should have ruled on all  
 18 the grounds related to the BPH's findings of unsuitability, thus giving  
 19 Petitioner notice of the "some evidence" review in a meaningful manner.  
 (Superintendent v. Hill, supra, (1985) 472 U.S. 445 - *passim*).

20 Under California Constitution Article VI Section 10, as the Superior  
 21 and Appellate Courts seemed to pass on issues before them without any  
 22 rationale the California Supreme Court can assume "original jurisdiction"  
 23 over the passed on claims, as well as review the other alleged wrongs.

24 Notwithstanding the Superior Court's conclusions of fact/law, this  
 25 Court can review, via a De Novo Hearing, in which to give Petitioner the  
 26 ability to present his grounds, being mindful that even minimal  
 27 interruptions of First Amendment Freedoms "unquestionably constitutes  
 28 irreparable injury" (Elrod v. Burns, (1976) 472 U.S. 347, 96 S.Ct. 2673).

1 Furthermore, Williams v. Taylor, (2000) 120 S.Ct. 1495, 529 U.S. 362,  
 2 does not permit California to unreasonably refuse to extend Fuentes v.  
 3 Shevin, *supra*, to this case, where it should apply (*i.e.*, being heard).

4 The Due Process Clauses of U.S. Constitutional Amendments V and XIV  
 5 are thus violated.

6 //

7 //

8 CONCLUSION

9 Petitioner has presented what he humbly believes to be a *prima facie*  
 10 case against the Board's denial of parole based on Due Process violations  
 11 as there is not "some evidence bearing an *indictia* of reliability" in the  
 12 record to support the board's findings and in fact the board's findings  
 13 are in contradiction of the record.

- 14 (1) The board relied upon the unchanging circumstances of his crime and  
 15 prior conduct to deny him parole for the Fifth time after some 20  
 16 years of rehabilitation and programming indicating he is NO threat  
 17 to the public safety.
- 18 (2) The board ignored the supportive psychological assessments and  
 19 substituted their own unqualified opinions ordering Petitioner to  
 20 participate in "rage management" therapy even though they acknowledged  
 21 that it is not available, AND used this non-existent need as a reason  
 22 to issue a two (2) year denial whereas petitioner had been getting  
 23 one year denials.
- 24 (3) The board exceeded its authority in requiring Petitioner to have parole  
 25 plans in excess of what the regulations require even when he presented  
 26 "excellent" primary parole plans as well as optional plans.
- 27 (4) The board used a non-violent minor rules infraction to claim his  
 28 institutional behavior was a reason to deny parole even though his

1           lack of a serious or violent disciplinary history actually shows him  
2           to be suitable according to the regulations.

3           (5) The board's reliance on the opposition from the District Attorney's  
4           office is an abuse of their discretion. This is not part of the  
5           criteria for determining suitability.

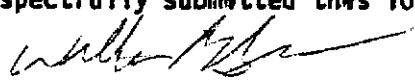
6           Notably, there was no mention in the board's findings that the Victim's  
7           family SUPPORTS a finding of suitability as they have for several  
8           years.

9           Petitioner therefore prays this court will grant him review on all  
10          the issues in his Superior Court petition.

11

12          Respectfully submitted this 10th day of December, 2006,

13

14            
15          WILLIAM BRADSHAW D-73217  
16          P.O. Box 689           GW-325L  
17          SOLEDAD, CA        93960-0689  
18          Petitioner in pro per

19

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**E X H I B I T 'A'**  
**APPELLATE COURT DENIAL**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

**FOURTH APPELLATE DISTRICT**

COURT OF APPEAL FOR ONTARIO  
FILED

### DIVISION THREE

Page 3 of 2066

G037697 [Property of]

(Super. Ct. No. M10957)

## ORDER

## THE COURT:<sup>\*</sup>

The petition for a writ of habeas corpus is DENIED.

ARONSON, J.

---

**ARONSON, ACTING P. J.**

---

\* Before Aronson, Acting P. J., Fybel, J., and Ikola, J.

COURT OF APPEAL  
FOURTH APPELLATE DISTRICT  
DIVISION THREE  
925 NORTH SPURGEON STREET  
SANTA ANA, CA 92701  
MAILING ADDRESS  
P.O. BOX 22055  
SANTA ANA, CA 92702

SANTA ANA 04-927

39.56CV 2008/09, 3.1.

Brad Shaw

DEC 04 2006

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DECLARATION OF SERVICE BY MAIL  
(by a person in state custody)  
(C.C.P. §§ 1013A, 2015.5)

I, WILLIAM BRADSHAW, D-73217 declare: I am a resident of the State of California, County of Monterey. I am over the age of 18 years and I am a party to the within action. My residence address is P.O. Box 689, Soledad, California, 93960-0689.

On December 17, 2006 I served the foregoing PETITION FOR REVIEW on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage fully prepaid in the United States mail at Soledad, California, addressed as follows:

Original + 13 Copies	One Copy
CALIFORNIA SUPREME COURT 350 McALLISTER STREET SAN FRANCISCO, CA 94102	OFFICE OF THE ATTORNEY GENERAL P.O. BOX 85266 SAN DIEGO, CA 91286-5266
One Copy	One Copy
FOURTH DISTRICT COURT OF APPEAL P.O. BOX 22055 SANTA ANA, CA 92702	ORANGE COUNTY SUPERIOR COURT 700 CIVIC CENTER DRIVE WEST SANTA ANA, CA 92701

There is regular mail delivery by the U.S. Postal Service between the place of mailing and the places so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17 day of December, 2006, at Soledad, California.



WILLIAM BRADSHAW  
Petitioner in pro per

PLEASE FILE ACCORDING TO THE "MAILBOX RULE" HOUSTON V. LACK (1987) 108 S.Ct. 2379; KOCK V. RICKETTS (9th Cir. 1995) 68 F.3d 1191, ON THE DATE INDICATED ABOVE.

# LODGEMENT V

SUPREME COURT (STATE) ORDER DENYING  
REVIEW

---

LODGEMENT V

Court of Appeal, Fourth Appellate District, Div. 3 - No. G037697  
S148910

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re WILLIAM BRADSHAW on Habeas Corpus

---

The petition for review is DENIED.

**SUPREME COURT  
FILED**

**MAR 14 2007**

**Frederick K. Ohlrich Clerk**

---

**Deputy**

---

**GEORGE**

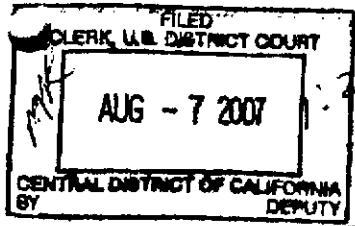
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**Chief Justice**

# LODGEMENT VI

PSYCH. REPORT

LODGEMENT VI



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

**SACV07- 807 CAS (JC)**

WILLIAM BRADSHAW

PLAINTIFF(S)

v.

B. CURRY, ET AL

DEFENDANT(S)

**NOTICE OF REFERENCE TO A  
UNITED STATES MAGISTRATE JUDGE  
(Petition for Writ of Habeas Corpus)**

Pursuant to General Order 07-02, the within action has been assigned to the calendar of the Honorable Christina A. Snyder, U.S. District Judge. Pursuant to General Order 05-07, the within action is referred to U.S. Magistrate Judge Jacqueline Chooljian, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that an evidentiary hearing is required, the Magistrate Judge shall prepare a report and recommendation and file it with the Clerk of the Court which may include proposed findings of fact and conclusions of law where necessary or appropriate, and may include a proposed written order or judgment, which shall be mailed to the parties for objections.

Pleadings and all other matters to be called to the Magistrate Judge's attention shall be formally submitted through the Clerk of the Court.

The Court must be notified within fifteen (15) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the petition with or without prejudice for want of prosecution.

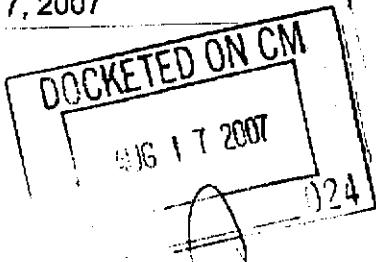
Clerk, U.S. District Court

August 7, 2007

Date

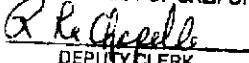
By MRAMIREZ

Deputy Clerk



1  
2

3 I hereby attest and certify on 4-10-08  
4 that the foregoing document is a full, true  
5 and correct copy of the original on file in  
6 my office, and in my legal custody.

7 CLERK U.S. DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9   
10 DEPUTY CLERK



11 1079

12 SCANNED

FILED	CLERK U.S. DISTRICT COURT
AUG 13 2007	
CENTRAL DISTRICT OF CALIFORNIA	
BY DEPUTY	

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JS-2/JS-3   
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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 WILLIAM BRADSHAW,  
16 Petitioner,  
v.  
B. CURRY, Warden, et al.,  
Respondent.

17 Case No. SACV 07-907 CAS (JC)

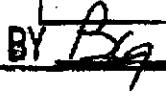
18 ORDER TRANSFERRING ACTION TO  
19 UNITED STATES DISTRICT COURT  
20 FOR THE NORTHERN DISTRICT OF  
21 CALIFORNIA

22 On August 7, 2007, petitioner William Bradshaw ("petitioner"), a California  
23 state prisoner currently incarcerated at the Correctional Training Facility in  
24 Soledad, California, filed a Petition for Writ of Habeas Corpus by a Person in  
25 State Custody pursuant to 28 U.S.C. § 2254 (the "Petition").

26 The Petition does not purport to be directed to the legality of petitioner's  
27 second degree murder conviction sustained in the Orange County Superior Court,  
28 or the ensuing sentence of 15 years to life plus two years imposed on December 4,  
1987. Rather, the Petition concerns a parole problem. (Petition at 2, 5-6).

Venue is proper in a habeas action in either the district of conviction or the  
district of confinement. See 28 U.S.C. § 2241(d).  
///

1

DOCKETED ON CM
AUG 20 2007
BY  010

(3)

1        In cases in which a habeas petition is directed to the petitioner's underlying  
 2 conviction or sentence, the district court for the district in which the petitioner was  
 3 convicted and sentenced is a more convenient forum because of the accessibility  
 4 of evidence, records and witnesses. Thus, district courts in California generally  
 5 transfer habeas actions questioning state convictions and/or sentences to the  
 6 district in which the petitioner was convicted and sentenced.

7        In cases in which a petition is directed to the manner in which a sentence is  
 8 being executed, e.g., if it involves parole or time credit claims, the district of  
 9 confinement is the preferable forum. Russo v. Newland, 2000 WL 194812, \*1  
 10 (N.D. Cal.); accord In re Phelon, 2002 WL 31618536, \*1 (N.D. Cal.) (Eastern  
 11 District of California preferable forum where High Desert State Prison inmate  
 12 sought federal habeas review of prison disciplinary decision); Giovinco v. Carey,  
 13 2003 WL 21696204, \*1 (N.D. Cal.) (Eastern District preferable forum for  
 14 challenge of parole decision made at prison within that district); see also Dunne v.  
 15 Henman, 875 F.2d 244, 249 (9th Cir. 1989) (proper forum for federal inmate to  
 16 challenge execution of sentence is district in which prisoner confined).  
 17 Accordingly, district courts in California generally transfer habeas actions  
 18 challenging the manner in which a sentence is being executed to the district in  
 19 which the petitioner is confined.

20       Petitioner is housed in the Correctional Training Facility which is located in  
 21 Monterey County which is within the jurisdictional boundaries of the Northern  
 22 District of California. See 28 U.S.C. § 84(a). Therefore, pursuant to 28 U.S.C. §§  
 23 1404(a) and 2241(d), and in the interests of justice,

24        //

25        //

26        //

27        //

28        //

1 IT IS HEREBY ORDERED:

2 The Clerk of this Court shall transfer this matter to the United States  
3 District Court for the Northern District of California, and shall serve a copy of this  
4 Order upon petitioner and upon the California Attorney General.

5 IT IS SO ORDERED.

6 DATED: 8/13/07

7  
8  
9  
Christina A. Snyder

10 HONORABLE CHRISTINA A. SNYDER  
11 UNITED STATES DISTRICT JUDGE

12 Presented by:

13 Jacqueline Chooljian  
14 Jacqueline Chooljian  
15 United States Magistrate Judge

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WILLIAM BRADSHAW (D-73217)  
P.O. BOX 689, CTF-CENTRAL  
GW-325-LDN  
SALEPAC, CA 93960-0689

26 July 2007

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
UNITED STATES COURTHOUSE  
ATTN: INTAKE / DOCKET SECTION  
312 NORTH SPRING STREET  
LOS ANGELES, CA 90012

RE: 5<sup>th</sup> Filing Fee for 28 USC § 2259

13 Dear Clerk of the Court:

15 The included \$<sup>20</sup> is for the filing fee of a 28 USC § 2254  
16 in your court. The same day of this letter, via mailbox  
17 rule, the § 2254 petition was mailed.

19 STANCRELLY

20 | William Bradford  
21

23 SACVO 7-947-C45 (JC)

RECEIVED  
CLERK, U.S. DISTRICT COURT  
AUG 14 2007  
CENTRAL DISTRICT OF CALIFORNIA  
BY [initials] DEPUTY

Free Period

DOCKETED ON CM  
AUG 20 2007  
BY [Signature] 010

1 WILLIAM BRADSHAW (D-13217)  
2 P.O. BOX 689 , CTF-CENTRAL  
3 GW-325-LON  
4 SOLEDAD, CA 93960-0689

26 JULY 2007

5 CLERK OF THE COURT  
6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8 UNITED STATES COURTHOUSE  
9 ATTN: INTAKE / DOCKET SECTION  
10 312 NORTH SPRING STREET  
11 LOS ANGELES, CA 90012

12 RE: 5<sup>00</sup> FILING FEE FOR 28USC§3354

13 Dear Clerk of the Court:

14 The included 5<sup>00</sup> is for the filing fee of 28USC§3354  
15 in your court. The same day of this letter, via mailbox  
16 rule, the §3354 petition was mailed.  
17

18 Sincerely,

19   
20  
21 WILLIAM BRADSHAW

22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY  
(C.C.P. §§ 1013(A), 2015.5)**

I, WILLIAM BRADSHAW, declare:  
I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterey, State of California. My prison address is:

William Bradshaw, CDCR #: D-73217  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: GN-325-Low  
SOLEDAD, CA 93960-0689.

On July 26, 2007, I served the attached:

RE: 5<sup>th</sup> filing fee for 28 USC § 8254

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

ATTN: Intake/Docket Section  
Clerk of the Court  
U.S. District Court, Central District of Cal.  
United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 26, 2007.

Willie W. Bradshaw

Declarant



WILLIAM BRADSHAW (D13321)  
P.O. BOX 689, CTF-CENTRAL  
GWI-335-LONG  
SOLEDAD, CA 93960-0689

Attn: Intake / Docket Section  
Clerk of the Court  
U.S. District Court, Central District of Cal.  
United States Courthouse  
6th - 6 North Spring Street  
Los Angeles, CA 90012

"Confidential"  
Legal  
Mild

Case 8:07-cv-00907-CAS-JC Document 4 Filed 04/10/2008 Page 1 of 1



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION  
312 North Spring Street, Room G-8  
Los Angeles, CA 90012  
Tel: (213) 894-3535

SHERRI R. CARTER  
District Court Executive and  
Clerk of Court

April 10, 2008

USDC-San Jose Division  
280 South First Street, Room 2112  
San Jose, CA 95113  
Attn: Snooki

Re: Transfer of our Civil Case No. 8:07-cv-907 CAS(JCx)

Case Title: William Bradshaw v. B Curry

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with certified copies of the order and the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

By R. La Chapelle  
Deputy Clerk

cc: All counsel of record

=====

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and we have assigned this matter case number CV: C08 02025 JF

Clerk, U.S. District Court

Tiffany Salinas-Harwell  
By \_\_\_\_\_  
Deputy Clerk

194, CLOSED, TRANSFERRED

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
 (Southern Division - Santa Ana)  
 CIVIL DOCKET FOR CASE #: 8:07-cv-00907-CAS-JC**

Bradshaw v. Curry  
 Assigned to: Judge Christina A. Snyder  
 Referred to: Magistrate Judge Jacqueline Chooljian  
 Cause: 28:2254 Petition for Writ of Habeas Corpus (State) Date Filed: 08/07/2007  
 Date Terminated: 08/13/2007  
 Jury Demand: None  
 Nature of Suit: 530 Habeas Corpus (General)  
 Jurisdiction: Federal Question

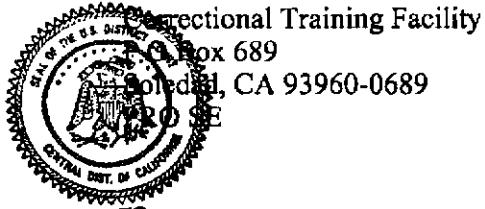
**Petitioner****William Bradshaw**represented by **William Bradshaw**  
D-73217

I hereby attest and certify on H-10-6b  
 that the foregoing document is a full, true  
 and correct copy of the original on file in  
 my office, and in my legal custody.

V.

**Respondent**

warden B Curry



CLERK U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

R. L. Chappelle  
 DEPUTY CLERK

Date Filed	#	Docket Text
08/07/2007	1	PETITION for Writ of Habeas Corpus by a Person In State Custody (28:2254) Case assigned to Judge Christina A. Snyder and referred to Magistrate Judge Chooljian.(Filing fee \$ 5.), filed by petitioner William Bradshaw.(dmjr) (Entered: 08/17/2007)
08/07/2007	2	NOTICE OF REFERENCE TO A U.S. MAGISTRATE JUDGE. Pursuant to the provisions of the Local Rules, the within action has been assigned to the calendar of Judge Christina A. Snyder and referred to Magistrate Judge Chooljian to consider preliminary matters and conduct all further matters as appropriate. The Court must be notified within 15 days of any change of address. (dmjr) (Entered: 08/17/2007)
08/13/2007	3	ORDER by Judge Christina A. Snyder transferring this matter to the United States District Court for the Northern District of California and shall serve a copy of this Order upon petitioner and upon the California Attorney General. Original file, certified copy of the transfer order and docket sheet sent. (MD JS-6. Case Terminated.)(bg) (Entered: 08/20/2007)
08/14/2007		FINANCIAL ENTRY: Received \$5.00 into the registry of the Court from JC Bradshaw. Re: Petition for Writ of Habeas Corpus (2254)[1] (bg) (Entered: 08/20/2007)

## CM/ECF - California Central District - Docket Report

Page 2 of 2

04/10/2008	4	TRANSMITTAL of documents to the Northern District of California, San Jose Division. Orginal Case file along with certified copies of docket and transfer Order mailed to San Jose Division, 280 South First Street, Room 2112, San Jose, CA 95113.(rla) (Entered: 04/10/2008)
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PACER Service Center			
Transaction Receipt			
04/10/2008 13:58:34			
PACER Login:	us3877	Client Code:	
Description:	Docket Report	Search Criteria:	8:07-cv-00907-CAS-JC
Billable Pages:	2	Cost:	0.16

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NOT FOR CITATION

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IN THE UNITED STATES DISTRICT COURT

9

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

11 WILLIAM BRADSHAW,	)	No. C 08-2025 JF (PR)
12 Petitioner,	)	ORDER CORRECTING
13 vs.	)	ERRONEOUS FILING; ORDER
14 B. CURRY, Warden,	)	CLOSING CASE;
15 Respondent.	)	INSTRUCTIONS TO CLERK

---

16

17 The instant petition for a writ of habeas corpus was transferred to this Court from  
18 the Central District of California on April 18, 2008. Petitioner, a state prisoner  
19 proceeding pro se, has an earlier habeas action pending with the Court in case no. C 08-  
20 1787 JF (PR). The instant petition is related to Petitioner's pending habeas action in case  
21 no. C 08-1787 JF (PR). Accordingly, the instant habeas action was mistakenly opened as  
22 a new case and will be closed. The Clerk is instructed to copy all documents from the  
23 instant case and transfer the documents to Petitioner's earlier filed habeas action in case  
24 number C 08-1787 JF (PR). The Court will review the merits of the petition in a separate  
25 written order in case number C 08-1787 JF (PR).

26

IT IS SO ORDERED.

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DATED: 4/24/08



JEREMY FOGEL  
United States District Judge

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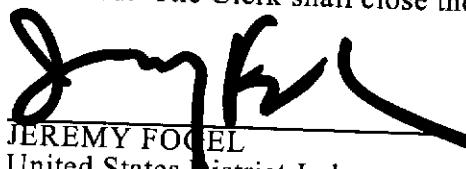
NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 WILLIAM BRADSHAW, ) No. C 08-2025 JF (PR)  
13 Petitioner, ) JUDGMENT  
14 vs. )  
15 B. CURRY, Warden, )  
16 Respondent. )  
17

18 The Court has closed the instant case because the petition filed on April 18, 2008,  
19 was mistakenly received and opened in a new habeas action, rather than being filed in  
20 Petitioner's pending habeas action in case no. C 08-1787 JF (PR). Accordingly, a  
21 judgment of dismissal without prejudice is entered. The Clerk shall close the file.

22 IT IS SO ORDERED.

23 DATED: 4/24/08

24   
JEREMY FOGEL  
United States District Judge